



# Virginia Register of Regulations

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**THE VIRGINIA REGISTER OF REGULATIONS** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission of Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to

provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

Proposed regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

## **FAST-TRACK RULEMAKING PROCESS**

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

## **EMERGENCY REGULATIONS**

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

*The Virginia Register of Regulations* is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **S. Bernard Goodwyn**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

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# PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

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## November 2007 through September 2008

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
24:6	November 7, 2007	November 26, 2007
24:7	November 20, 2007 ( <b>Tuesday</b> )	December 10, 2007
<b>INDEX 1 Volume 24</b>		<b>January 2008</b>
24:8	December 5, 2007	December 24, 2007
24:9	December 18, 2007 ( <b>Tuesday</b> )	January 7, 2008
24:10	January 2, 2008	January 21, 2008
24:11	January 16, 2008	February 4, 2008
24:12	January 30, 2008	February 18, 2008
24:13	February 13, 2008	March 3, 2008
24:14	February 27, 2008	March 17, 2008
<b>INDEX 2 Volume 24</b>		<b>April 2008</b>
24:15	March 12, 2008	March 31, 2008
24:16	March 26, 2008	April 14, 2008
24:17	April 9, 2008	April 28, 2008
24:18	April 23, 2008	May 12, 2008
24:19	May 7, 2008	May 26, 2008
24:20	May 21, 2008	June 9, 2008
<b>INDEX 3 Volume 24</b>		<b>July 2008</b>
24:21	June 4, 2008	June 23, 2008
24:22	June 18, 2008	July 7, 2008
24:23	July 2, 2008	July 21, 2008
24:24	July 16, 2008	August 4, 2008
24:25	July 30, 2008	August 18, 2008
24:26	August 13, 2008	September 1, 2008

\*Filing deadlines are Wednesdays unless otherwise specified.

# CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2007 VAC Supplement includes final regulations published through *Virginia Register* Volume 23, Issue 21, dated June 25, 2007). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 1. Administration</b>			
1 VAC 55-30-10 through 1 VAC 55-30-90	Added	23:26 VA.R. 4413-4416	10/3/07
<b>Title 2. Agriculture</b>			
2 VAC 5-110 (Forms)	Amended	23:26 VA.R. 4452	--
2 VAC 5-580-10 through 2 VAC 5-580-310	Repealed	24:2 VA.R. 72	10/16/07
2 VAC 5-585-10 through 2 VAC 5-585-4070	Added	24:2 VA.R. 72-133	10/16/07
<b>Title 3. Alcoholic Beverages</b>			
3 VAC 5-50-40	Amended	23:25 VA.R. 4107	*
3 VAC 5-50-50	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-80	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-100	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-130	Amended	23:25 VA.R. 4109	*
3 VAC 5-50-140	Amended	23:25 VA.R. 4110	*
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 20-20-50	Amended	24:5 VA.R. 555	11/1/07
4 VAC 20-252-90	Amended	24:4 VA.R. 471	10/1/07
4 VAC 20-252-100	Amended	24:4 VA.R. 471	10/1/07
4 VAC 20-260-10	Amended	24:4 VA.R. 472	10/1/07
4 VAC 20-260-20	Amended	24:4 VA.R. 472	10/1/07
4 VAC 20-260-30	Amended	24:4 VA.R. 473	10/1/07
4 VAC 20-260-35	Added	24:4 VA.R. 474	10/1/07
4 VAC 20-260-40	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-260-60	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-650-20	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-650-30	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-650-40	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-720-20	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-720-20	Erratum	24:5 VA.R. 621	--
4 VAC 20-720-40 through 4VAC20-720-80	Amended	24:4 VA.R. 478-480	10/1/07
4 VAC 20-720-95	Added	24:4 VA.R. 480	10/1/07
4 VAC 20-720-110	Amended	24:4 VA.R. 480	10/1/07
4 VAC 20-755-10	Amended	24:2 VA.R. 133	9/1/07
4 VAC 20-755-20	Amended	24:2 VA.R. 133	9/1/07
4 VAC 20-755-30	Amended	24:2 VA.R. 136	9/1/07
4 VAC 20-910-45	Amended	24:5 VA.R. 556	11/1/07
4 VAC 20-1120-20	Amended	23:23 VA.R. 3871	6/28/07
4 VAC 25-20 (Forms)	Amended	23:24 VA.R. 3968	--
4 VAC 25-50-10 through 4 VAC 25-50-110	Repealed	23:22 VA.R. 3696	8/8/07

\* Objection to Fast-Track Rulemaking 24:1

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 25-130-777.17	Amended	23:22 VA.R. 3696	8/8/07
<b>Title 5. Corporations</b>			
5 VAC 5-30-10	Amended	23:23 VA.R. 3872	7/1/07
5 VAC 5-30-20	Amended	23:23 VA.R. 3872	7/1/07
5 VAC 5-30-30	Amended	23:23 VA.R. 3873	7/1/07
5 VAC 5-30-40	Amended	23:23 VA.R. 3873	7/1/07
5 VAC 5-30-50	Amended	23:23 VA.R. 3874	7/1/07
5 VAC 5-30-60	Amended	23:23 VA.R. 3874	7/1/07
5 VAC 5-30-70	Amended	23:23 VA.R. 3875	7/1/07
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 15-20-10 through 6 VAC 15-20-230	Amended	23:22 VA.R. 3697-3703	8/9/07
6 VAC 20-120-40	Amended	23:25 VA.R. 4177	9/19/07
6 VAC 35-20-37 emer	Amended	23:25 VA.R. 4178	8/1/07-7/31/08
6 VAC 35-180-10 through 6 VAC 35-180-170	Added	24:5 VA.R. 557-561	1/1/08
6 VAC 35-190-10 through 6VAC35-190-110	Added	24:2 VA.R. 137-139	10/31/07
6 VAC 40-50-10 through 6VAC40-50-80 emer	Added	23:23 VA.R. 3876	7/1/06-12/29/07
<b>Title 8. Education</b>			
8 VAC 20-21-10 through 8 VAC 20-21-730	Repealed	23:25 VA.R. 4179	9/21/07
8 VAC 20-22-10 through 8 VAC 20-22-760	Added	23:25 VA.R. 4179-4214	9/21/07
8 VAC 20-160-10	Amended	23:23 VA.R. 3876	8/27/07
8 VAC 20-160-20	Amended	23:23 VA.R. 3878	8/27/07
8 VAC 20-160-30	Amended	23:23 VA.R. 3878	8/27/07
8 VAC 20-160-40	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-160-50	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-160-60	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-190-10	Repealed	24:5 VA.R. 562	1/1/08
8 VAC 20-500-10	Repealed	24:5 VA.R. 563	1/1/08
8 VAC 20-541-10 through 8 VAC 20-541-60	Repealed	23:25 VA.R. 4214	9/21/07
8 VAC 20-542-10 through 8 VAC 20-542-600	Added	23:25 VA.R. 4214-4270	9/21/07
8 VAC 35-60-10	Added	24:1 VA.R. 25	8/28/07
8 VAC 35-60-20	Added	24:1 VA.R. 25	8/28/07
8 VAC 35-60-30	Added	24:1 VA.R. 25	8/28/07
8 VAC 40-140-10 through 8 VAC 40-140-90	Added	23:22 VA.R. 3704-3706	7/1/07
<b>Title 9. Environment</b>			
9 VAC 5-20-203	Amended	24:5 VA.R. 564	12/12/07
9 VAC 5-20-204	Amended	24:5 VA.R. 565	12/12/07
9 VAC 5-40-20	Amended	24:5 VA.R. 566	12/12/07
9 VAC 5-50-20	Amended	24:5 VA.R. 570	12/12/07
9 VAC 5-50-400	Amended	24:5 VA.R. 573	12/12/07
9 VAC 5-50-410	Amended	24:5 VA.R. 573	12/12/07
9 VAC 5-60-60	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-90	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-92	Added	24:5 VA.R. 579	12/12/07
9 VAC 5-60-95	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-100	Amended	24:5 VA.R. 580	12/12/07
9 VAC 5-91-20	Amended	24:5 VA.R. 587	12/12/07
9 VAC 5-140-3400	Amended	24:5 VA.R. 594	12/12/07
9 VAC 20-130-10	Amended	24:4 VA.R. 480	11/28/07
9 VAC 20-130-40	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-60	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-70	Amended	24:4 VA.R. 484	11/28/07

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 20-130-90	Amended	24:4 VA.R. 485	11/28/07
9 VAC 20-130-110	Amended	24:4 VA.R. 485	11/28/07
9 VAC 20-130-120	Amended	24:4 VA.R. 486	11/28/07
9 VAC 20-130-125	Added	24:4 VA.R. 488	11/28/07
9 VAC 20-130-130	Amended	24:4 VA.R. 489	11/28/07
9 VAC 20-130-140	Repealed	24:4 VA.R. 489	11/28/07
9 VAC 20-130-150	Repealed	24:4 VA.R. 489	11/28/07
9 VAC 20-130-165	Amended	24:4 VA.R. 489	11/28/07
9 VAC 20-130-175 through 9VAC20-130-230	Amended	24:4 VA.R. 490-493	11/28/07
9 VAC 25-31-100	Amended	24:3 VA.R. 313	11/14/07
9 VAC 25-31-120	Amended	24:3 VA.R. 309	11/14/07
9 VAC 25-31-165	Amended	24:3 VA.R. 333	11/14/07
9 VAC 25-260-5	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-30	Amended	24:2 VA.R. 139	9/11/07
9 VAC 25-260-30	Amended	24:2 VA.R. 140	9/11/07
9 VAC 25-260-50	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-187	Added	24:4 VA.R. 536	8/14/07
9 VAC 25-260-310	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-480	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3881	10/22/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3888	10/22/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3895	10/22/07
9 VAC 25-720-50	Amended	24:2 VA.R. 140	11/15/07
9 VAC 25-720-80	Amended	23:23 VA.R. 3901	10/22/07
9 VAC 25-720-90	Amended	24:2 VA.R. 147	11/15/07
<b>Title 11. Gaming</b>			
11 VAC 10-45-10	Amended	24:5 VA.R. 595	12/12/07
11 VAC 10-45-25	Added	24:5 VA.R. 596	12/12/07
<b>Title 12. Health</b>			
12 VAC 5-90-80 emer	Amended	24:5 VA.R. 597	10/24/07-10/23/08
12 VAC 5-125-10 through 12 VAC 5-125-180	Added	23:23 VA.R. 3904-3919	9/1/07
12 VAC 5-421-10	Amended	24:2 VA.R. 149	10/16/07
12 VAC 5-421-90	Amended	24:2 VA.R. 157	10/16/07
12 VAC 5-421-100	Amended	24:2 VA.R. 157	10/16/07
12 VAC 5-421-120	Amended	24:2 VA.R. 158	10/16/07
12 VAC 5-421-140	Amended	24:2 VA.R. 158	10/16/07
12 VAC 5-421-160	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-170	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-180	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-190	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-200	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-230	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-250	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-270	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-295	Added	24:2 VA.R. 160	10/16/07
12 VAC 5-421-300	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-330	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-340	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-350	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-360	Amended	24:2 VA.R. 161	10/16/07

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-430	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-440	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-450	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-460	Added	24:2 VA.R. 162	10/16/07
12 VAC 5-421-500	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-520	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-530	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-550	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-560	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-570	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-580	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-590	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-600	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-620	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-670	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-680	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-700	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-720	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-760	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-765	Added	24:2 VA.R. 166	10/16/07
12 VAC 5-421-780	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-790	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-800	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-820	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-830	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-840	Amended	24:2 VA.R. 169	10/16/07
12 VAC 5-421-850	Amended	24:2 VA.R. 169	10/16/07
12 VAC 5-421-860	Amended	24:2 VA.R. 170	10/16/07
12 VAC 5-421-870	Amended	24:2 VA.R. 170	10/16/07
12 VAC 5-421-880	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-890	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-900	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-910	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-920	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-930	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-940	Amended	24:2 VA.R. 172	10/16/07
12 VAC 5-421-950	Amended	24:2 VA.R. 172	10/16/07
12 VAC 5-421-960	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-970	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-990	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1000	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1010	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1020	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1030	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1040	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1070	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1090	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1120	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1200	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1260	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1270	Amended	24:2 VA.R. 174	10/16/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-1300	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1310	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1320	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1330	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1340	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1350	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1360	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1370	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1460	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1510	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1520	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1530	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1540	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1620	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1640	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1660	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1670	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1680	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1690	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1700	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1710	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1720	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1730	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1750	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1760	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1780	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1810	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1820	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1880	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1890	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1900	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1960	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2010	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2080	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2190	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2200	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2210	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2270	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2310	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2320	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2520	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2630	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2680	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2710	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2790	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2810	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2820	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2840	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2850	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2870	Amended	24:2 VA.R. 183	10/16/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-2880	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2930	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2990	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3040	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3120	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3200	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3210	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3230	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3310	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3370	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3380	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3450	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3510	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3560	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3580	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3590	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3620	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3660	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3700	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3750	Amended	24:2 VA.R. 187	10/16/07
12 VAC 5-421-3760	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3800	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3815	Added	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3860	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3900	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3960	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-3970	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-4000	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-4035	Added	24:2 VA.R. 190	10/16/07
12 VAC 5-421-4050	Amended	24:2 VA.R. 191	10/16/07
12 VAC 5-421-4070	Amended	24:2 VA.R. 191	10/16/07
12 VAC 5-585-70	Amended	24:5 VA.R. 602	12/17/07
12 VAC 5-585-510	Amended	24:5 VA.R. 602	12/17/07
12 VAC 5-585-600	Amended	24:5 VA.R. 607	12/17/07
12 VAC 5-585-610	Amended	24:5 VA.R. 607	12/17/07
12 VAC 5-585-620	Amended	24:5 VA.R. 612	12/17/07
12 VAC 5-585-630	Amended	24:5 VA.R. 614	12/17/07
12 VAC 5-585-760 through 12 VAC 5-585-830	Added	23:25 VA.R. 4298-4301	10/1/07
12 VAC 30-10-820	Added	24:2 VA.R. 191	10/31/07
12 VAC 30-60-500 emer	Added	23:26 VA.R. 4427	8/8/07-8/7/08
12 VAC 30-80-40 emer	Amended	24:3 VA.R. 377	10/1/07-9/30/08
12 VAC 30-120	Erratum	23:24 VA.R. 4080	--
12 VAC 30-120-370 emer	Amended	23:24 VA.R. 4029	9/1/07-8/31/08
12 VAC 30-120-380 emer	Amended	23:24 VA.R. 4032	9/1/07-8/31/08
12 VAC 30-135-100 through 12VAC30-135-360	Added	24:2 VA.R. 196-218	12/1/07
12 VAC 35-115-10 through 12 VAC 35-115-250	Amended	23:25 VA.R. 4301-4340	9/19/07
12 VAC 35-115-145	Added	23:25 VA.R. 4329	9/19/07
12 VAC 35-115-146	Added	23:25 VA.R. 4330	9/19/07
12 VAC 35-115-160	Repealed	23:25 VA.R. 4332	9/19/07
<b>Title 13. Housing</b>			
13 VAC 5-31	Erratum	23:24 VA.R. 4079	--

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 5-91	Erratum	23:24 VA.R. 4080	--
<b>Title 14. Insurance</b>			
14 VAC 5-215-20	Amended	23:22 VA.R. 3768	7/1/07
14 VAC 5-215-30	Amended	23:22 VA.R. 3768	7/1/07
14 VAC 5-215-50	Amended	23:22 VA.R. 3769	7/1/07
14 VAC 5-215-60	Amended	23:22 VA.R. 3770	7/1/07
14 VAC 5-215-80	Amended	23:22 VA.R. 3770	7/1/07
<b>Title 16. Labor and Employment</b>			
16 VAC 15-21-30	Amended	23:23 VA.R. 3933	8/23/07
16 VAC 25-90-1910.6	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.66 Appendix D	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.302 through 16 VAC 25-90-1910.308	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.399 Subpart S Appendix A	Amended	24:1 VA.R. 26	12/15/07
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 41-70-10 through 18 VAC 41-70-280	Added	23:25 VA.R. 4349-4359	9/20/07
18 VAC 50-30-10	Amended	24:3 VA.R. 416	11/15/07
18 VAC 50-30-40	Amended	24:3 VA.R. 418	11/15/07
18 VAC 50-30-90	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-100	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-120	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-130	Amended	24:3 VA.R. 420	11/15/07
18 VAC 50-30-190	Amended	24:3 VA.R. 421	11/15/07
18 VAC 50-30-200	Amended	24:3 VA.R. 422	11/15/07
18 VAC 50-30-220	Amended	24:3 VA.R. 422	11/15/07
18 VAC 60-20-17	Amended	24:3 VA.R. 424	11/29/07
18 VAC 60-20-71	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 65-10-10 through 18VAC65-10-80	Amended	24:2 VA.R. 226-228	11/15/07
18 VAC 65-10-100	Amended	24:2 VA.R. 228	11/15/07
18 VAC 65-10-110	Amended	24:2 VA.R. 228	11/15/07
18 VAC 65-10-120	Amended	24:2 VA.R. 228	11/15/07
18 VAC 85-20-140	Amended	24:1 VA.R. 27	10/17/07
18 VAC 85-20-235	Amended	23:25 VA.R. 4360	9/20/07
18 VAC 85-20-235	Amended	23:25 VA.R. 4361	9/20/07
18 VAC 85-20-290	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 85-20-400 through 18 VAC 85-20-420	Adding	23:25 VA.R. 4362-4363	9/20/07
18 VAC 85-40-61	Amended	24:1 VA.R. 28	10/17/07
18 VAC 85-40-61	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-40-65	Amended	24:1 VA.R. 28	10/17/07
18 VAC 85-50-58	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-80-72	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-101-152	Amended	24:1 VA.R. 30	10/18/07
18 VAC 85-110-155	Amended	24:1 VA.R. 30	10/18/07
18 VAC 85-120-130	Amended	24:2 VA.R. 229	10/31/07
18 VAC 90-20-30	Amended	23:25 VA.R. 4363	10/1/07
18 VAC 90-20-225	Added	23:25 VA.R. 4364	10/1/07
18 VAC 90-30-240	Added	24:3 VA.R. 427	11/29/07
18 VAC 90-60-100	Amended	24:3 VA.R. 429	11/29/07
18 VAC 95-10-10 through 18VAC95-10-80	Amended	24:2 VA.R. 231-232	11/15/07
18 VAC 95-10-100	Amended	24:2 VA.R. 232	11/15/07
18 VAC 95-10-110	Amended	24:2 VA.R. 232	11/15/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 95-10-120	Amended	24:2 VA.R. 232	11/15/07
18 VAC 105-20-10	Amended	23:22 VA.R. 3791	9/24/07
18 VAC 110-20-180	Erratum	24:3 VA.R. 444	--
18 VAC 110-40-10 through 18VAC110-40-50	Amended	24:3 VA.R. 430-431	11/14/07
18 VAC 112-20-81 emer	Added	24:4 VA.R. 497	11/1/07-10/31/08
18 VAC 112-20-90 emer	Amended	24:4 VA.R. 497	11/1/07-10/31/08
18 VAC 112-20-130 emer	Amended	24:4 VA.R. 498	11/1/07-10/31/08
18 VAC 112-20-131 emer	Amended	24:4 VA.R. 498	11/1/07-10/31/08
18 VAC 112-20-150 emer	Amended	24:4 VA.R. 499	11/1/07-10/31/08
18 VAC 120-40-10	Amended	23:24 VA.R. 4038	9/5/07
18 VAC 120-40-15	Added	23:24 VA.R. 4039	9/5/07
18 VAC 120-40-20	Amended	23:24 VA.R. 4039	9/5/07
18 VAC 120-40-60	Repealed	24:3 VA.R. 433	12/29/07
18 VAC 120-40-80 through 18VAC120-40-360	Amended	23:24 VA.R. 4040-4052	9/5/07
18 VAC 120-40-221	Added	23:24 VA.R. 4043	9/5/07
18 VAC 120-40-222	Added	23:24 VA.R. 4043	9/5/07
18 VAC 120-40-295	Added	23:24 VA.R. 4048	9/5/07
18 VAC 120-40-342	Added	23:24 VA.R. 4050	9/5/07
18 VAC 120-40-370	Repealed	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-380	Repealed	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-385	Added	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-390	Amended	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-400	Repealed	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-410	Amended	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-411	Added	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-411.1 through 18VAC120-40-411.21	Added	23:24 VA.R. 4054-4064	9/5/07
18 VAC 120-40-415	Added	23:24 VA.R. 4064	9/5/07
18 VAC 120-40-415.1	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-415.2	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-415.3	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-420	Amended	23:24 VA.R. 4066	9/5/07
18 VAC 120-40-430	Amended	23:24 VA.R. 4066	9/5/07
18 VAC 135-30 (Forms)	Amended	24:1 VA.R. 41	--
18 VAC 135-40 (Forms)	Amended	24:1 VA.R. 43	--
18 VAC 135-50-10	Amended	23:22 VA.R. 3794	9/22/07
18 VAC 135-50-20	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-50-220	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-50-400	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 150-10-10	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-20	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-30	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-40	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-50	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-60	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-70	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-80	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-100	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-10-110	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-10-120	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-20-30	Amended	24:3 VA.R. 436	11/29/07
18 VAC 150-20-100	Amended	24:3 VA.R. 436	11/29/07

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18 VAC 150-20-140	Amended	24:3 VA.R. 437	11/29/07
18 VAC 150-20-220	Added	24:3 VA.R. 438	11/29/07
18 VAC 150-20-230	Added	24:3 VA.R. 438	11/29/07
18 VAC 150-20-240	Added	24:3 VA.R. 438	11/29/07
<b>Title 19. Public Safety</b>			
19 VAC 30-170-15	Amended	24:2 VA.R. 233	10/1/07
19 VAC 30-170-50	Amended	24:2 VA.R. 233	10/1/07
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-417-10	Amended	24:4 VA.R. 513	10/9/07
20 VAC 5-417-50	Amended	24:4 VA.R. 513	10/9/07
<b>Title 21. Securities and Retail Franchising</b>			
21 VAC 5-10-40	Amended	23:23 VA.R. 3940	7/1/07
21 VAC 5-20-65	Added	23:23 VA.R. 3942	7/1/07
21 VAC 5-20-95	Added	23:23 VA.R. 3942	7/1/07
21 VAC 5-20-280	Amended	23:23 VA.R. 3943	7/1/07
21 VAC 5-20-330	Amended	23:23 VA.R. 3947	7/1/07
21 VAC 5-80-65	Added	23:23 VA.R. 3949	7/1/07
21 VAC 5-80-160	Amended	23:23 VA.R. 3950	7/1/07
21 VAC 5-80-200	Amended	23:23 VA.R. 3954	7/1/07
21 VAC 5-110	Erratum	23:24 VA.R. 4079	--
21 VAC 5-110-65	Added	23:23 VA.R. 3959	7/1/07
21 VAC 5-110-75	Added	23:23 VA.R. 3960	7/1/07
<b>Title 22. Social Services</b>			
22 VAC 40-35-10	Amended	23:23 VA.R. 3962	9/1/07
22 VAC 40-35-80	Amended	23:23 VA.R. 3965	9/1/07
22 VAC 40-35-90	Amended	23:23 VA.R. 3965	9/1/07
22 VAC 40-35-100	Amended	23:23 VA.R. 3966	9/1/07
22 VAC 40-41-10 through 22 VAC 40-41-50	Amended	23:22 VA.R. 3796-3799	9/1/07
22 VAC 40-41-55	Amended	23:22 VA.R. 3799	9/1/07
22 VAC 40-41-60	Amended	23:22 VA.R. 3799	9/1/07
22 VAC 40-72-55	Added	24:5 VA.R. 616	12/12/07
22 VAC 40-72-367	Added	24:5 VA.R. 616	12/12/07
22 VAC 40-72-930	Amended	24:1 VA.R. 38	11/1/07
22 VAC 40-72-960	Amended	24:1 VA.R. 39	11/1/07
22 VAC 40-375-10 through 22 VAC 40-375-60	Repealed	24:5 VA.R. 616	12/12/07
22 VAC 40-770-10 through 22 VAC 40-770-160	Repealed	24:2 VA.R. 234	11/1/07
22 VAC 40-771-10 through 22 VAC 40-771-160	Added	24:2 VA.R. 234-242	11/1/07
<b>Title 23. Taxation</b>			
23 VAC 10-210-485	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-210-693 emer	Amended	23:25 VA.R. 4364	7/26/07-07/25/08
23 VAC 10-210-6041	Amended	23:24 VA.R. 4068	9/6/07
23 VAC 10-210-6042	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-210-6043	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-240-20 through 23 VAC 10-240-60	Repealed	23:25 VA.R. 4372-4373	10/04/07
23 VAC 10-240-100	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-130	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-140	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-150	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-200	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-210	Repealed	23:25 VA.R. 4373	10/04/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
23 VAC 10-240-240	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-270	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-280	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-300	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-310	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-330	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-340	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-360	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-380	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-400	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-420	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-430	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-450	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-460	Repealed	23:25 VA.R. 4375	10/04/07
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 20-120-10 through 24VAC20-120-180	Repealed	24:4 VA.R. 516	1/1/08
24 VAC 20-121-10 through 24 VAC 20-121-220	Adding	24:4 VA.R. 516-529	1/1/08
24 VAC 22-20-10	Amended	24:3 VA.R. 439	12/1/07
24 VAC 22-20-20	Amended	24:3 VA.R. 440	12/1/07
24 VAC 27-10-10 through 24VAC27-10-120	Added	23:24 VA.R. 4071-4075	9/20/07
24 VAC 30-45-10	Added	24:2 VA.R. 243	10/1/07
24 VAC 30-45-20	Added	24:2 VA.R. 243	10/1/07
24 VAC 30-45-30	Added	24:2 VA.R. 244	10/1/07
24 VAC 30-200-10	Amended	24:4 VA.R. 529	11/28/07
24 VAC 30-200-20	Amended	24:4 VA.R. 530	11/28/07
24 VAC 30-200-30	Amended	24:4 VA.R. 531	11/28/07
24 VAC 30-200-35	Added	24:4 VA.R. 532	11/28/07
24 VAC 30-200-40	Amended	24:4 VA.R. 533	11/28/07

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF COUNSELING

#### Agency Decision

Title of Regulation: **18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy.**

Statutory Authority: §54.1-2400 of the Code of Virginia.

Name of Petitioner: Philip M. Campbell.

Nature of Petitioner's Request: To amend regulations to allow an applicant to be licensed as a marriage and family therapist by obtaining any additional academic courses necessary for clinical practice as determined by a licensed marriage and family therapist who is preferably affiliated with a COAMFTE-approved marriage and family therapy training program.

Agency's Decision: Request denied.

Statement of Reasons for Decision: The board determined that amendments to current regulations to allow nonboard members to determine acceptability of coursework and qualification for licensure was not consistent with its statutory authority to license marriage and family therapists.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4610, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R08-03; Filed October 31, 2007, 8:53 a.m.

### BOARD OF NURSING

#### Initial Agency Notice

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing.**

Statutory Authority: §54.1-2400 of the Code of Virginia.

Name of Petitioner: Carmina Teresa V. Bautista.

Nature of Petitioner's Request: To amend regulations to eliminate the requirement for the CGFNS qualifying examination for foreign-trained nurses.

Agency's Plan for Disposition of Request: The petition for rulemaking will be published in the Register of Regulations and sent to interested parties to request comments for 30 days. The board will consider the request at its meeting on January 29, 2008, and determine whether to initiate rulemaking.

Public comments may be submitted until December 26, 2007.

Agency Contact: Jay P. Douglas, Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4623, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R08-04; Filed November 6, 2007, 10:03 a.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 2. AGRICULTURE

### STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the State Board of Agriculture and Consumer Services intends to consider amending the following regulations: **2VAC5-200, Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry**. The purpose of the proposed action is to consider amending the current regulation to authorize additional approved methods for the disposal of large numbers of dead poultry when disposal of whole flocks is necessary. The amendments will modify and clarify the development and requirement for filing of disposal plans by poultry operations of all sizes when dealing with whole flock mortality. In addition, consideration will be given to amending the current regulation to allow for the elimination of the requirement that all commercial poultry farms file a disposal plan with the State Veterinarian. Disposal of entire poultry flocks of all sizes would be handled in accordance with the VDACS-approved emergency disease plans.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §3.1-726 of the Code of Virginia.

Public comments: Public comments may be submitted until 5 p.m. on December 26, 2007.

Agency Contact: Colleen Calderwood, DVM, Program Manager, Department of Agriculture and Consumer Services, P. O. Box 1163, Richmond, VA 23218, telephone 804-786-2483, FAX 804-371-2380, TTY 800-828-1120, or email [colleen.calderwood@vdacs.virginia.gov](mailto:colleen.calderwood@vdacs.virginia.gov).

VA.R. Doc. No. R08-916; Filed October 29, 2007, 1:16 p.m.

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### DEPARTMENT OF MINES, MINERALS AND ENERGY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending the following regulations: **4VAC25-40, Safety and Health Regulations for Mineral Mining**. The purpose of the proposed action is to make technical corrections, clarify unclear language,

update references, make the regulation internally consistent and consistent with the Code of Virginia, and strength certain provisions dealing with mine safety. Sections to be strengthened relate to blasting, mine rescue, and construction and maintenance of mine structures.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§45.1-161.3, 45.1-161.294, and 45.1-161.305 of the Code of Virginia.

Public comments: Public comments may be submitted until 5 p.m. on December 26, 2007.

Agency Contact: David Spears, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth St., 8th Floor, Richmond, VA 23219-3402, telephone 804-692-3212, FAX 804-692-3237, TTY 800-828-1120, or email [david.spears@dmme.virginia.gov](mailto:david.spears@dmme.virginia.gov).

VA.R. Doc. No. R08-944; Filed October 26, 2007, 12:00 p.m.

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending the following regulations: **9VAC25-190, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining**. The purpose of the proposed action is to reissue the existing general permit that expires on June 30, 2009. The general permit will establish limitations and monitoring requirements for point source discharges from nonmetallic mineral mining facilities.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §62.1-44.15 of the Code of Virginia; §402 of the Clean Water Act; 40 CFR Parts 122, 123 and 124.

Public comments: Public comments may be submitted until 5 p.m. on January 7, 2008.

Agency Contact: Eleanore Daub, Department of Environmental Quality, 629 E. Main St., P.O. Box 1105, Richmond, VA 23218, telephone 804-698-4111, FAX 804-698-4032, or email [emdaub@deq.virginia.gov](mailto:emdaub@deq.virginia.gov).

VA.R. Doc. No. R08-1057; Filed November 6, 2007, 4:31 p.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending the following regulations: **9VAC25-630, Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management.** The purpose of the proposed action is to establish requirements for end-users of poultry waste to ensure that poultry waste is being used in a manner in which state waters are being protected and nutrients losses are being reduced and that these reductions can be measured.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

Public comments: Public comments may be submitted until 5 p.m. on January 11, 2008.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 629 E. Main St., P.O. Box 1105, Richmond, VA 23218, telephone 804-698-4059, FAX 804-698-4116, or email [bkbowles@deq.virginia.gov](mailto:bkbowles@deq.virginia.gov).

VA.R. Doc. No. R08-1062; Filed November 7, 2007, 8:42 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF MEDICINE

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board of Medicine intends to consider amending the following regulations: **18VAC85-20, Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic.** The purpose of the proposed action is to require a four-year degree from a college or university prior to chiropractic school.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §54.1-2400 and Chapter 29 (§54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Public comments: Public comments may be submitted until 5 p.m. on December 26, 2007.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Dr., Suite 300, Richmond, VA 23233-1463, telephone 804-367-4621, FAX 804-527-4429, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

VA.R. Doc. No. R07-19; Filed October 26, 2007, 4:20 p.m.

# REGULATIONS

For information concerning the different types of regulations, see the Information Page.

## Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### DEPARTMENT OF CONSERVATION AND RECREATION

#### Final Regulation

**REGISTRAR'S NOTICE:** The Department of Conservation and Recreation is claiming an exemption from the Administrative Process Act in accordance with §2.2-4006 A 1, which excludes agency orders or regulations fixing rates or prices. The Department of Conservation and Recreation will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 4VAC5-36. Standard Fees for Use of Department of Conservation and Recreation Facilities, Programs, and Service (amending 4VAC5-36-50, 4VAC5-36-60, 4VAC5-36-70, 4VAC5-36-90, 4VAC5-36-100, 4VAC5-36-110, 4VAC5-36-120, 4VAC5-36-130, 4VAC5-36-140, 4VAC5-36-150, 4VAC5-36-200, 4VAC5-36-210, 4VAC5-36-220).

**Statutory Authority:** §10.1-104 of the Code of Virginia.

**Effective Date:** January 1, 2008.

**Agency Contact:** David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone 804-786-2291, FAX 804-786-6141, or email david.dowling@dcr.virginia.gov.

#### Summary:

*The amendments change the standard fees for parking and launching; admission; swimming; camping; cabins; picnic shelters; amphitheaters and gazebos; boat storage; interpretive canoes, boats, and paddleboats programs; interpretive and educational tours and programs; miscellaneous rentals; conference center rentals; and administrative and processing.*

*Increases to these rates and prices represent changes to maintain fair market value, the addition of new facilities and offerings, updates to ensure consistency with the private sector, and revisions to reflect private concessionaires' new seasonal prices. These fee amendments increase the camping, cabin, and shelter rental rates across the board by approximately 5.0%. Annual passes were increased by 10% and daily parking fees were increased by \$1.00 at Pocahontas, First Landing, and Lake Anna. Daily parking fees were increased by \$1.00 at Leesylvania for weekdays only. Boat storage fees were increased at Claytor Lake and Leesylvania by 10%.*

#### 4VAC5-36-50. Parking and launch fees.

##### PARKING FEES (NONTAXABLE)

	WEEKDAYS	WEEKENDS
Daily Parking for Passenger Vehicles: Applies to cars, trucks, vans (up to 15 passenger), and motorcycles.		
All parks unless listed below.	\$2.00	\$3.00
Parks under construction and having only limited facilities and services.	\$2.00	\$2.00
<del>First Landing</del> , Fairy Stone, Raymond R. "Andy" Guest Jr. Shenandoah River, Smith Mountain Lake, Claytor Lake, <del>Lake Anna, Pocahontas</del> , Kiptopeke, Westmoreland, Mason Neck, Sky Meadows, <del>Chippokes</del>	\$3.00	\$4.00
Leesylvania, <del>First Landing</del> , <u>Lake Anna, Pocahontas</u>	<del>\$3.00</del> <u>\$4.00</u>	\$5.00

## Regulations

York River Croaker Landing/Pier Area (also requires boat launch fee for all vehicles)	\$3.00	\$3.00
Horse Trailer Parking Fee (also requires vehicle parking fee.) All parks unless listed below.	\$3.00 per trailer	\$3.00 per trailer
Lake Anna	\$4.00 per trailer	\$4.00 per trailer
Surcharge for additional horse in same trailer.	\$2.00 per horse	\$2.00 per horse
Other Trailer Parking Fee: Applies to other trailers not covered by camping, horse trailer and boat launch fee. (Add to daily parking fee.)	\$2.00 per trailer	\$2.00 per trailer
Daily Bus Parking: All Seasons. Applies to vehicles with 16 or more passenger capacity.		
All parks unless listed below.	\$10	\$10
Claytor Lake, Hungry Mother, Leesylvania, Mason Neck, New River Trail	\$12	\$12
First Landing, Kiptopeke, Lake Anna, Pocahontas, Westmoreland	\$15	\$15
Natural Area Preserve Parking Fees for any Vehicle: The department may charge these fees at any Natural Area Preserve.	\$2.00	\$2.00
Boat Launch Fees: Required to use park boat ramps on bodies of water where motorboats are permitted. Required for all vehicles using York River Croaker Landing/Pier Area. May not apply to small "car-top" launch facilities (facilities at which boats may only be launched by hand carrying them to the water). The fee is normally added to the parking fee to create a combined park/launch payment.		
Daily Launch Fees: All Seasons		
All parks unless listed below.	\$3.00	\$3.00
Claytor Lake	\$2.00	\$2.00
First Landing, Kiptopeke (with Marine Fishing License), Lake Anna	\$4.00	\$4.00
Kiptopeke (without Marine Fishing License), Leesylvania	\$8.00	\$8.00
Surcharge for second boat on same trailer: jet ski	\$2.00	\$2.00
Overnight parking at boat launch: where available	\$10	\$10
Camper's Boat Launch Fee Kiptopeke: Does not apply if camper parks trailer at campsite.	\$3.00	\$3.00

	FEE
Annual and Lifetime Parking Fees:	
Lifetime Naturally Yours Passport Plus: Lifetime admission and parking pass to all state parks, plus 10% discount on camping, all state park merchandise, equipment rentals, and shelter rentals.	\$275
<u>Age up to 40</u>	<u>\$303</u>
<u>Age 41-45</u>	<u>\$273</u>

# Regulations

<u>Age 46-50</u>	<u>\$242</u>
<u>Age 51-55</u>	<u>\$212</u>
<u>Age 56-61</u>	<u>\$182</u>
<u>Senior Lifetime Naturally Yours Passport Plus (Age 62 or older): See Lifetime Naturally Yours Passport Plus above.</u>	<u>\$110</u>
Naturally Yours Passport Plus: 12-month from date of purchase admission and parking pass to all state parks, plus 10% discount on camping, all state park merchandise, equipment rentals, and shelter rentals.	<del>\$55</del> <u>\$61</u>
Naturally Yours Parking Passport: 12-month from date of purchase admission and parking pass to park of purchase.	<del>\$33</del> <u>\$36</u>
<del>Senior Lifetime Naturally Yours Passport Plus: See Lifetime Naturally Yours Passport Plus above.</del>	<u>\$100</u>
Senior Naturally Yours Passport Plus: See Naturally Yours Passport Plus above.	<del>\$30</del> <u>\$33</u>
Senior Naturally Yours Parking Passport: See Naturally Yours Parking Passport above.	<del>\$20</del> <u>\$22</u>
Golden Disability Pass: Available to persons with disabilities as verified by U.S. Social Security Administration's (SSA) "Benefit Verification Letter." Pass remains in effect unless SSA withdraws eligibility.	No Charge
Annual Horse Trailer-Vehicle Pass: 12-months from date of purchase admission and park pass, including horse trailer, good at all parks.	<del>\$72</del> <u>\$79</u>
Annual Horse Trailer-Vehicle Pass: Occoneechee and Staunton River Only	<del>\$33</del> <u>\$50</u>
Annual and Lifetime Park/Launch Fees:	
Lifetime Naturally Yours Passport Plus for Boaters: Lifetime admission, parking, and launch pass to all state parks, plus 10% discount on camping, all state park merchandise, equipment rentals, and shelter rentals.	<u>\$385</u>
<u>Age up to 40</u>	<u>\$606</u>
<u>Age 41-45</u>	<u>\$545</u>
<u>Age 46-50</u>	<u>\$485</u>
<u>Age 51-55</u>	<u>\$424</u>
<u>Age 56-61</u>	<u>\$364</u>
<u>Senior Lifetime Naturally Yours Passport Plus for Boaters (Age 62 or older): See Lifetime Naturally Yours Passport Plus for Boaters above.</u>	<u>\$314</u>
Naturally Yours Passport Plus for Boaters: 12-month from date of purchase admission, parking, and launch pass to all state parks, plus 10% discount on camping, all state park merchandise, equipment rentals, and shelter rentals.	<del>\$138</del> <u>\$152</u>
Park/Launch Passport:	
12-month from date of purchase admission, parking, and launch pass to all state parks including Leesylvania.	<del>\$116</del> <u>\$128</u>
12-month from date of purchase admission, parking, and launch pass to First Landing, Kiptopeke, or Lake Anna. Good only at park of purchase.	<del>\$88</del> <u>\$97</u>
12-month from date of purchase admission, parking, and launch pass to park of purchase other than Leesylvania, First Landing, Kiptopeke, or Lake Anna.	<del>\$72</del> <u>\$79</u>

# Regulations

<del>Senior Lifetime Naturally Yours Passport Plus for Boaters: Good at all parks.</del>	<del>\$285</del>
Senior Naturally Yours Passport Plus for Boaters: Annual permit for all parks including Leesylvania.	\$110 <u>\$121</u>
Senior Park/Launch Passport:	
12-month from date of purchase admission, parking, and launch pass to all state parks including Leesylvania.	<del>\$99</del> <u>\$109</u>
12-month from date of purchase admission, parking, and launch pass to First Landing, Kiptopeke, or Lake Anna. Good only at park of purchase.	<del>\$72</del> <u>\$79</u>
12-month from date of purchase admission, parking, and launch pass to park of purchase other than Leesylvania, First Landing, Kiptopeke, or Lake Anna.	<del>\$60</del> <u>\$66</u>
Buggs Island Lake Special Annual Pass: Good only at Occoneechee and Staunton River State Parks.	<del>\$33</del> <u>\$50</u>
Leesylvania Annual Overnight Boating/Parking Pass.	<del>\$61</del> <u>\$67</u>
<del>Handicapped</del> <u>Disabled</u> Visitor Annual Boat Launch Pass (in addition to <del>handicapped</del> <u>disabled</u> tags).	<del>\$40</del> <u>\$44</u>
Parks and Trails Passport:	
In conjunction with the purchase of an annual parking pass	<del>\$10</del> <u>\$11</u>
Without the purchase of an annual parking pass	<del>\$15</del> <u>\$17</u>

Special Event Fees:	EVENT FEE
Standard Special Event Parking Fee: Applies to all parks and events that utilize parking fees unless noted below.	\$10 per vehicle
Community Event Fee: May be used by any park as a condition of a Special Use Permit for a community event provided by a nonprofit group or organization or government agency or entity.	\$1.00 per vehicle
James River: James River Raft Race	\$5.00 per vehicle
Sky Meadows: Strawberry Festival.	
Advance payment	\$15 per vehicle
Day of Event	\$20 per vehicle
<u>Sky Meadows: Virginia Scottish Games</u>	
<u>Vehicle Parking</u>	<u>\$5.00 per vehicle</u>
<u>Per Person Admission</u>	<u>\$15 per person</u> <u>\$5.00 per person, active military and active military family members</u> <u>\$5.00 per child 6-12 years</u> <u>Children under 6 free</u>
New River Trail: Wythe County Heritage Day. Grayson Highlands Fall Festival. Hungry Mother Arts and Crafts Festival.	
	\$6.00 per vehicle

# Regulations

Claytor Lake Arts and Crafts Festival: Free parking with canned food donation on designated day.	\$5.00 per vehicle \$9.00 per two-day pass \$12 per three-day pass
Kiptopeke: Eastern Shore Birding Festival.	Parking Fee waived to registered festival guests; otherwise standard fees apply
Smith Mountain Lake: special park/launch rate for boaters participating in fishing tournaments if the tournament sponsor has also rented the Tournament Headquarters Building.	\$5.00 per vehicle/ boat combination
Standard Special Event Per Person Entrance Fee: Applies to all parks and events that utilize per person admission fees unless noted below.	\$4.00 per adult \$3.00 per child, 6 through 12 years Children under 6 free
Sailor's Creek Battlefield: Battle of Sailor's Creek Reenactment.	\$5.00 per person Children under 6 free \$10 maximum per vehicle \$50 per bus (16 passenger +)
Chippokes Plantation Steam and Gas Engine Show.	\$5.00 per person Children under 12 free
Chippokes Plantation Christmas.	\$5.00 per person
Chippokes Gospel Explosion	\$10 per person \$7.00 for advance ticket purchase Children under 12 free
Grayson Highlands Wayne C. Henderson Music Festival.	\$10 per person Children under 12 free
York River Estuaries Day.	\$2.00 (Age 3 through 12) \$3.00 (Age 13 and over)
Natural Tunnel Special Event Parking Fee.	\$2.00 per person \$6.00 per vehicle
Occoneechee Pow Wow	\$5.00 per person Seniors (62 and over) free Children under 4 free
Occoneechee Pow Wow School Groups	\$4.00 per student Teachers and Chaperones free

## Notes on parking fees:

1. Weekend rates apply on Memorial Day, Fourth of July, and Labor Day holidays.
2. No parking fee is required for up to two vehicles per campsite and per cabin. Vehicles in excess of two shall pay the prevailing daily parking fee for each day that the vehicle is parked in the park.
3. Except as otherwise noted, boat launching shall be free for up to one boat per vehicle per campsite or cabin.
4. Parking fees are waived for any vehicle displaying ~~handicapped~~ disabled license plates or temporary ~~handicapped~~ disabled parking identification issued by any state or the federal government. However, the boat launch fee or the portion of any combined parking-launching fee that applies to boat launching shall be collected from such vehicles. Additionally, the price for lifetime passes that include boat launching for qualified disabled individuals shall be calculated by subtracting the applicable parking pass fee from the park/launch pass fee.

5. Parking fees are waived for any vehicle occupied solely by students and/or teachers and/or assisting personnel participating in an official activity of a bona fide school or institution of higher learning. Parks may require that individuals in vehicles other than those marked as a school bus verify their official activity by letter from the school or approved field trip form.
6. Parking fees are waived for official vehicles of federal, state, and local governments while on official business; vehicles making deliveries to the park; contractor and business vehicles performing work in the park; and emergency vehicles while conducting official business, including training.
7. Parking fees are waived for park employees during time of employment, including family and household members of staff occupying staff residences, visitors to staff residences, and park volunteers entering the park to perform volunteer duties.
8. Parking fees may be waived for vehicles conducting research or collecting activities provided such waiver is included in the language of the Research and Collection Permit as required in 4VAC5-30-50.
9. The period covered by a daily parking fee shall be midnight to midnight. Park guests utilizing overnight parking when and where available (e.g., backpackers, overnight ~~fisherman~~ fishermen, etc.) will be required to pay the applicable daily parking fee for each calendar day that their vehicle is in the parking lot (partial days included).
10. Annual permits shall be valid for 12 months from the date of purchase, unless otherwise noted.
11. Parking fees are waived for visitors entering the park for the sole purpose of dining at the park restaurant at Douthat and Hungry Mother State Parks.
12. Parking fees are waived at state parks for participants in Walk for Parks, Fall River Renaissance, Envirothons, March for Parks, Operation Spruce-Up Day, Stewardship Virginia, ~~and~~ National Trails Day, and other park-sanctioned public service events as approved by the director.
13. Daily parking fees are reduced to \$1.00 for vehicles occupied by participants in fund-raising events sponsored by nonprofit organizations (Walk-A-Thons, etc.) provided the sponsor has obtained a special use permit from the park that contains provisions for the identification of participants in the event.
14. Parking fees shall be waived for persons using park roads to gain legal access to their private residence and guests to such residences; and for vehicles passing through, but not stopping in, a park on a public roadway.
15. Revenue collected from special event parking and/or admission fees may be divided between the park and the event sponsor if so designated and approved in the special event permit following a determination made by the director that the revenue split is in the benefit of the Commonwealth.
16. Annual Park/Launch pass also covers the park entrance or parking fee for horse trailers or other allowable trailers. Annual and Lifetime parking-only passes do not include trailers.
17. Parking fees are waived for service vehicles such as tow trucks when entering the park to service a visitor vehicle.
18. Parking fees are waived for visitors entering the park to attend a performance by a U.S. military band if this is a required condition for the band's performance.
19. Parking fees are included in the rental fees for meeting facilities, up to the capacity of the facility and provided that this waiver of fee is included in the rental agreement for the facility.
20. Parking fees are waived for a period of up to 15 minutes for persons entering the park to deposit materials in community recycling collection containers.
21. Parking fees are waived for vehicles occupied entirely by persons attending fee interpretive programs.
22. Annual parking passes that do not include boat launch require payment of daily launch fee if launching a boat at any park or for all vehicles using Croaker Landing/Pier Area at York River State Park.
23. Annual parking pass holders are not guaranteed the parking privileges of the pass should parking places be unavailable.
24. Parking fees are waived at Mason Neck during the park's annual Elizabeth Hartwell Eagle Festival.

# Regulations

## 4VAC5-36-60. Admission fees.

### ADMISSION FEES (NONTAXABLE)

	DAILY ADMISSION PER PERSON (Weekdays and Weekends unless otherwise noted.)	ANNUAL PASS (Good for 12 months from date of purchase.)
Shot Tower	Free	NA
Southwest VA Museum	\$1.50 (Groups of 10 or more any age)	\$3.00 (age 6 through 12) per year
	\$2.00 (Ages 6 through 12)	\$5.00 (age 13 and over) per year
	\$3.00 (Age 13 and up)	\$15 (family: up to 2 adults and 2 children) per year
<del>Chippokes Plantation: Chippokes Mansion</del>	<del>\$2.00 (Age 6 through 12) \$4.00 (Age 13 and over) \$2.00 group rate (10 or more)</del>	NA
<del>Chippokes Plantation: Farm and Forestry Museum</del>	<del>\$3.00 (Age 13 and over) \$2.00 (Age 6 through 12) \$2.00 group rate (10 or more)</del>	NA
<del>Chippokes Plantation: Combination Pass</del>	<del>\$6.00 (Age 13 and over) \$3.00 (Age 6 through 12)</del>	NA
Kiptopeke Fishing Pier Fishing Fee	\$1.00 (Age 6 through 12) \$3.00 (Age 13 and over)	NA
Kiptopeke Fishing Pier Fishing Fee: Coupon book good for 10 visits	\$20 per 10 Passes	NA
Annual Night Fishing: All parks where available (also requires parking fee)	\$15 per person per year	
Late Night Fishing: All parks where available (also requires parking fee)	\$3.00 per person per night	

	ADMISSION
Natural Tunnel Chairlift:	
Children under age 6	Free
Round trip per person	\$3.00
One-way per person	\$2.00
Group Rate Round Trip per person (10 or more)	\$2.00
Season Pass	\$20
Daily Pass (Good for unlimited trips on date of issue, good for one person only)	\$6.00
Archery Range: All parks where available; per person user fee	\$2.00 per day (over 15) \$1.00 per day (under 15) \$15 per year (any age)
New River Challenge Registration Fees	

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Early Registration Fee:	\$35 per person \$90 per team
Late Registration Fee:	\$45 per person \$110 per team
James River: River Raft Race Registration	\$15 per person
Park Sponsored Special Event Vendor Fees. All parks where available unless otherwise noted.	\$125 per merchandise vendor \$150 per food vendor \$50 late fee
Mason Neck Harvest Festival Event.	\$50 per vendor

Notes on admission/entrance fees:

1. Fees are waived at Natural Tunnel for use of the chairlift on one designated "Customer Appreciation Day" per year.
2. Museum entrance fees are waived at the Southwest Virginia Museum during the "Festival of Trees" event for members of groups who submitted trees for the display.
3. For park museums and historic features that charge an entrance fee, visitors participating in the Time Travelers program of the Virginia Association of Museums shall be charged the existing per person group rate for that facility.

**4VAC5-36-70. Swimming fees.**

SWIMMING (NONTAXABLE)

Daily Swimming Fees	WEEKDAYS	WEEKENDS
All parks with fee swimming areas unless noted.	Under age 3 Free \$2.00 (Age 3 through 12) \$3.00 (Age 13 and over)	Under age 3 Free \$3.00 (Age 3 through 12) \$4.00 (Age 13 and over)
<u>Staunton River</u>	<u>Under age 3 Free</u> <u>\$3.00 (Age 3 through 12)</u> <u>\$4.00 (Age 13 and over)</u>	<u>Under age 3 Free</u> <u>\$4.00 (Age 3 through 12)</u> <u>\$5.00 (Age 13 and over)</u>
Pocahontas	Under age 3 Free \$5.00 (Age 3 through 12) \$6.00 (Age 13 and over)	Under age 3 Free \$7.00 (Age 3 through 12) \$8.00 (Age 13 and over)
Group campers utilizing primitive group camps. All parks where available unless otherwise noted.	\$1.00 (all ages)	\$1.00 (all ages)
Pocahontas (Group Cabin Guests)	\$3.00 (all ages)	\$3.00 (all ages)
Chippokes Plantation: Recreation/Education Fun Package: Swimming, Mansion, and Farm & Forestry Museum (Memorial Day – Labor Day: Wed. – Sun.)	\$3.50 (Age 3 through 12) \$6.00 (Age 13 and over)	\$3.50 (Age 3 through 12) \$6.00 (Age 13 and over)
Deposit on all locker keys: Refunded when key is returned.	\$2.00 each	

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Swimming Coupon Book: (Age 3 and over). All parks where available unless otherwise noted.	\$18 per 10 coupons \$35 per 20 coupons
<u>Staunton River</u>	<u>\$24 per 10 coupons</u> <u>\$45 per 20 coupons</u>
Pocahontas	\$35 per 10 coupons \$68 per 20 coupons
Group Swimming: per person (10 persons or more). All parks where available unless otherwise noted, except Pocahontas.	\$1.50 (Age 3 through 12) \$2.50 (Age 13 and over)
<u>Staunton River Group Swimming (20 persons or more).</u> <u>Five-day advanced registration required.</u>	<u>\$2.50 (all ages)</u>
Pocahontas Group Swimming (20 persons or more). Five-day advanced registration required.	\$3.00 (all ages)
Season Swimming Permit: All parks where available unless otherwise noted.	\$40 (Age 3 through 12) \$50 (Age 13 and over)
<u>Staunton River</u>	<u>\$50 (Age 3 through 12)</u> <u>\$60 (Age 13 and over)</u>
Pocahontas	\$60 (Age 3 through 12) \$70 (Age 13 and over)
After-Hours Exclusive Use of Pool or Swimming Area: All parks where available. Requires prior reservation. Rental period of approximately 1-2 hours, depending upon operating schedule and amount of available daylight. Cancellation fee charged if reservation is cancelled less than 3 days before the date of event unless cancellation is for inclement weather or cancelled by the park.	\$100 (up to 25 persons) \$125 (26 to 50 persons) \$175 (51 to 75 persons) \$200 (76 to 100 persons) \$35 to open food concessions with rental \$50 cancellation fee
Swimming lessons. All parks where available unless otherwise noted. Package of eight 45-minute lessons (includes parking)	\$30 per person \$25 per person if two or more from same family

## Notes on swimming fees:

1. Nonswimming adults in street clothes admitted to swimming areas free when supervising children age 12 and under.
2. Rain check Policy for Swimming: All state parks will issue a rain check, good for a period of 12 months from the date of issue, to any paying customer (does not apply to free swimming vouchers) if the swimming area is forced to close for 40 minutes or more due to inclement weather. Rain checks may be issued only to patrons present at the swimming area at the time of closure.
3. A full refund is available for a group reservation only if the park or swimming area contractor is notified three days in advance of the time of the reservation. In the event that the group is unable to complete their reservation due to inclement weather, rain checks will be issued to the individual members of the group in the same manner as other park patrons.
4. All Season Swimming Permits include parking during the swimming season only.

**4VAC5-36-90. Camping fees.**

CAMPING FEES (TAXABLE, Price here does not include tax)

Camping fees include free use of dump station and free swimming and boat launching for members of the camping party during their stay at the property, when and where available, except that at Kiptopeke State Park guest is subject to applicable launch fee unless the trailer is returned to the campsite immediately after launching. The number of campers per campsite is limited to six individuals except when all campers are members of the same household.	ALL SEASONS (Per site fees)
Standard Sites: No hookup; access to bathhouse and restrooms.	
All parks with standard sites unless noted below.	\$15 <del>\$16</del> per night
Chippokes Plantation, Hungry Mother, Grayson Highlands, Staunton River, Westmoreland, Occoneechee (nonwaterfront), Claytor Lake, Raymond R. "Andy" Guest, Jr. Shenandoah River, Smith Mountain Lake.	\$19 <del>\$20</del> per night
Occoneechee Waterfront Sites	\$22 <del>\$23</del> per night
Douthat, Kiptopeke, First Landing, Lake Anna.	\$23 <del>\$24</del> per night
Water and Electric Sites: Access to water and electric hookups; access to bathhouse and restrooms.	
All parks where available unless noted below.	<del>\$21</del> <del>\$22</del> per night
Chippokes Plantation, Claytor Lake, Douthat, Fairy Stone, Grayson Highlands, Hungry Mother, Occoneechee (nonwaterfront), Staunton River, Westmoreland, Pocahontas, Smith Mountain Lake, Belle Isle, James River.	\$24 <del>\$25</del> per night
Occoneechee Waterfront Sites	\$27 <del>\$28</del> per night
Kiptopeke, First Landing, Lake Anna.	\$29 <del>\$30</del> per night
Water, Electric, and Sewage Sites: Access to water, electric, and sewage hookups; access to bathhouse and restrooms.	
Kiptopeke	<del>\$33</del> <del>\$35</del> per night
Hungry Mother	\$27 <del>\$28</del> per night
Primitive Camping Sites: primitive restrooms; no showers.	
All parks where available unless noted below.	\$10 <del>\$11</del> per night
<del>Grayson Highlands (November, March, and April when bathhouses are closed),</del> James River, Sky Meadows.	\$12 <del>\$13</del> per night
Grayson Highlands: Sites with electricity (November, March and April when bathhouses are closed)	\$14 <del>\$15</del> per night
New River Trail Primitive camping sites at Foster Falls and Cliffview	\$14 <del>\$15</del> per night
New River Trail Water Trail Camping (no potable water)	<del>\$11</del> <del>\$12</del> per night
Horse Camping	
Horse Stall Fee: <del>All horses must be in stalls.</del>	\$7.00 per night (Outside Stalls) \$9.00 per night (Inside Stall)
Standard Rates	

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Primitive Group Camp Rental (camping in special primitive group areas) All parks where available.	
Up to 20 campers.	\$58 <del>\$61</del> for entire area per night
Up to 30 campers.	\$87 <del>\$91</del> for entire area per night
31 or more campers, up to maximum capacity of group camp area.	\$116 <del>\$122</del> for entire area per night
Grayson Highlands: Primitive camping is available in the stable area November, March, and April.	\$14 <del>\$15</del> per site per night
Special Group Camping Areas:	
Fairy Stone Group Campsites.	\$19 <del>\$20</del> per site per night
Twin Lakes, Cedar Crest Group Camping Area.	\$200 <del>\$210</del> for entire area per night
Chippokes Plantation: All 4 Sites; Group Rate; 24 persons maximum. Natural Tunnel Group Area. Grayson Highlands Group Area. James River Group Area. Shenandoah Group Area.	\$64 <del>\$67</del> per night (only available as entire group area)
Westmoreland Group Area.	\$116 <del>\$122</del> per night
Standard Buddy Sites: All parks where available unless noted below.	\$74 <del>\$78</del> per night
Douthat Buddy Sites.	\$92 <del>\$97</del> per night
James River Equestrian Group Area.	\$87 <del>\$91</del> per night
Camping – Other Fees	
<del>Pop-up Camper Rentals (this fee is in addition to the camping site fee).</del>	\$50 per night
Pet Fees	\$3.00 <del>\$5.00</del> per pet per night
Dump Station Fee: Free to state park campers during stay.	\$5.00 per use
Camping Reservation Cancellation Fee Individual Site.	\$10 per reservation
Camping Reservation Cancellation Fee Group Sites.	\$30 per reservation
Hiker or noncamper Shower Fee at Virginia State Parks.	\$5.00 per person

## Notes on camping:

1. Check-out time is 3 p.m. and check-in time is 4 p.m.
2. Camping Transfer/Cancellation/Early Departure Policy.
  - a. Any fees to be refunded are calculated less the applicable cancellation fee(s).
  - b. Fees paid to the reservation center by credit card will be refunded to the original credit card charged.
  - c. Fees paid by check or money order to the reservation center, or by any method at the park, will be refunded by state check.
  - d. A customer may move a camping reservation to another date or park, referred to as a transfer, through the reservation center only, and prior to 4 p.m. on the scheduled date of arrival. If the reservation center will not be open again prior to the start date of the reservation, transferring is not an option. There is no fee to transfer.
  - e. A camping reservation may be canceled until 4 p.m. on the scheduled date of arrival but campers will be charged the cancellation fee. This cancellation fee applies to each separate reservation made.

f. Once the 4 p.m. check-in time is reached on the scheduled day of arrival, any adjustment to a reservation is considered an early departure.

g. After the check-in time is reached, the first night is considered used whether the site is occupied or not.

h. There is a one-night penalty, deducted from any amount available for refund, for early departure.

3. Campers are allowed two vehicles per campsite per day without charge of a parking fee. Additional vehicles, beyond two, must pay the prevailing parking fee in effect at the park for each day that the vehicle(s) is parked in the park. The number of vehicles allowed to park on the campsite varies according to site design and size of other camping equipment. No vehicles shall park on a campsite in other than the designated area for this purpose. Camper vehicles that do not fit on the site, whether or not they require the special camper vehicle fee, must park in the designated overflow parking area.

4. Each member of the camping party, except in primitive group areas, up to the maximum allowable per site, may receive an entrance pass to the park's swimming facility on the basis of one pass per night of camping. Passes only issued during days and seasons of operation of the swimming facility and only good during the ~~members~~ member's registered stay.

5. Damage to campsites, not considered normal wear and tear, will be billed to the person registered for the campsite on an itemized cost basis.

6. At honor collection sites, the stated camping fees on this list shall be considered as having tax included. Honor collection is defined as the payment of the camping fee on-site at the park at a nonelectronic collection point at which the payment is placed in a box or safe provided for that purpose.

#### 4VAC5-36-100. Cabin fees.

CABIN RENTALS (TAXABLE, Price here does not include tax)

	BASE RATE		VIRGINIA RESIDENTS	
PRIME SEASON CABIN AND LODGE RATES				
Cabin/Lodge Type	Per-Night Rental Fee	Per-Week Rental Fee	Per-Night Rental Fee	Per-Week Rental Fee
Efficiency	<del>\$80</del> <u>\$84</u>	<del>\$478</del> <u>\$502</u>	<del>\$71</del> <u>\$75</u>	<del>\$429</del> <u>\$450</u>
One Bedroom, Standard	<del>\$93</del> <u>\$98</u>	<del>\$561</del> <u>\$589</u>	<del>\$84</del> <u>\$88</u>	<del>\$504</del> <u>\$529</u>
One Bedroom, Waterfront or Water View	<del>\$103</del> <u>\$108</u>	<del>\$621</del> <u>\$652</u>	<del>\$92</del> <u>\$97</u>	<del>\$554</del> <u>\$582</u>
One Bedroom, Chippokes Plantation	<del>\$108</del> <u>\$113</u>	<del>\$653</del> <u>\$686</u>	<del>\$99</del> <u>\$104</u>	<del>\$588</del> <u>\$617</u>
Two Bedroom, Standard, all parks where available unless noted below	<del>\$107</del> <u>\$112</u>	<del>\$648</del> <u>\$680</u>	<del>\$97</del> <u>\$102</u>	<del>\$584</del> <u>\$613</u>
Two Bedroom, <del>Claytor Lake</del> , Bear Creek Lake, James River, Occoneechee, Lake Anna	<del>\$112</del> <u>\$118</u>	<del>\$679</del> <u>\$713</u>	<del>\$101</del> <u>\$106</u>	<del>\$612</del> <u>\$643</u>
Two Bedroom, Waterfront or Water View, all parks where available unless noted below	<del>\$119</del> <u>\$125</u>	<del>\$713</del> <u>\$749</u>	<del>\$107</del> <u>\$112</u>	<del>\$642</del> <u>\$674</u>
Two Bedroom, Waterfront or Water View, <del>Claytor Lake</del> , Bear Creek Lake, James River, Occoneechee, Lake Anna	<del>\$124</del> <u>\$130</u>	<del>\$747</del> <u>\$784</u>	<del>\$112</del> <u>\$118</u>	<del>\$672</del> <u>\$706</u>
Two Bedroom, First Landing, Chippokes Plantation	<del>\$126</del> <u>\$132</u>	<del>\$753</del> <u>\$791</u>	<del>\$113</del> <u>\$119</u>	<del>\$678</del> <u>\$712</u>
Three Bedroom, Standard, all parks where available unless noted below	<del>\$123</del> <u>\$129</u>	<del>\$734</del> <u>\$771</u>	<del>\$110</del> <u>\$116</u>	<del>\$659</del> <u>\$692</u>
Three Bedroom, Chippokes Plantation, Bel Air Guest House	<del>\$142</del> <u>\$149</u>	<del>\$855</del> <u>\$898</u>	<del>\$128</del> <u>\$134</u>	<del>\$770</del> <u>\$809</u>

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Three Bedroom, <del>Waterfront or Water View</del> , Claytor Lake, Bear Creek Lake, James River, Occoneechee, Lake Anna, Southwest Virginia Museum Poplar Hill Cottage	<del>\$142</del> <u>\$149</u>	<del>\$846</del> <u>\$888</u>	<del>\$124</del> <u>\$130</u>	<del>\$760</del> <u>\$798</u>
Hill Lodge (Twin Lakes)	<del>\$159</del> <u>\$167</u>	<del>\$954</del> <u>\$1,002</u>	<del>\$143</del> <u>\$150</u>	<del>\$859</del> <u>\$902</u>
Fairy Stone Lodge (Fairy Stone), Creasy Lodge (Douthat), Bel Air Mansion (Belle Isle)	<del>\$287</del> <u>\$301</u>	<del>\$1,716</del> <u>\$1,802</u>	<del>\$257</del> <u>\$270</u>	<del>\$1,545</del> <u>\$1,622</u>
Douthat Lodge (Douthat), Hungry Mother Lodge (Hungry Mother), Potomac River Retreat (Westmoreland)	<del>\$337</del> <u>\$354</u>	<del>\$2,023</del> <u>\$2,124</u>	<del>\$303</del> <u>\$318</u>	<del>\$1,822</del> <u>\$1,913</u>
6-Bedroom Lodge, <del>Water View</del> : Kiptopeke, James River, Claytor Lake, Occoneechee, Bear Creek Lake, <del>Lake Anna</del>	<del>\$353</del> <u>\$371</u>	<del>\$2,120</del> <u>\$2,226</u>	<del>\$318</del> <u>\$334</u>	<del>\$1,909</del> <u>\$2,004</u>
MID-SEASON CABIN AND LODGE RATES				
Cabin/Lodge Type	Per-Night Rental Fee	Per-Week Rental Fee	Per-Night Rental Fee	Per-Week Rental Fee
Efficiency	<del>\$70</del> <u>\$74</u>	<del>\$425</del> <u>\$446</u>	<del>\$64</del> <u>\$67</u>	<del>\$382</del> <u>\$401</u>
One Bedroom, Standard	<del>\$83</del> <u>\$87</u>	<del>\$498</del> <u>\$523</u>	<del>\$76</del> <u>\$80</u>	<del>\$448</del> <u>\$470</u>
One Bedroom, Waterfront or Water View	<del>\$91</del> <u>\$96</u>	<del>\$547</del> <u>\$574</u>	<del>\$82</del> <u>\$86</u>	<del>\$494</del> <u>\$519</u>
One Bedroom, Chippokes Plantation	<del>\$87</del> <u>\$91</u>	<del>\$522</del> <u>\$548</u>	<del>\$79</del> <u>\$83</u>	<del>\$470</del> <u>\$494</u>
Two Bedroom, Standard, all parks where available unless noted below	<del>\$96</del> <u>\$101</u>	<del>\$576</del> <u>\$605</u>	<del>\$87</del> <u>\$91</u>	<del>\$519</del> <u>\$545</u>
Two Bedroom, <del>Claytor Lake</del> , Bear Creek Lake, James River, Occoneechee, Lake Anna	<del>\$100</del> <u>\$105</u>	<del>\$604</del> <u>\$634</u>	<del>\$91</del> <u>\$96</u>	<del>\$543</del> <u>\$570</u>
Two Bedroom, Waterfront or Water View, all parks where available unless noted below	<del>\$106</del> <u>\$111</u>	<del>\$634</del> <u>\$666</u>	<del>\$95</del> <u>\$100</u>	<del>\$570</del> <u>\$599</u>
Two Bedroom, Waterfront or Water View, <del>Claytor Lake</del> , Bear Creek Lake, James River, Occoneechee, Lake Anna	<del>\$111</del> <u>\$117</u>	<del>\$664</del> <u>\$697</u>	<del>\$99</del> <u>\$104</u>	<del>\$597</del> <u>\$627</u>
Two Bedroom, First Landing, Chippokes Plantation	<del>\$101</del> <u>\$106</u>	<del>\$603</del> <u>\$633</u>	<del>\$90</del> <u>\$95</u>	<del>\$542</del> <u>\$569</u>
Three Bedroom, Standard, all parks where available unless noted below	<del>\$108</del> <u>\$113</u>	<del>\$653</del> <u>\$686</u>	<del>\$99</del> <u>\$104</u>	<del>\$588</del> <u>\$617</u>
Three Bedroom, Chippokes Plantation, Bel Air Guest House	<del>\$114</del> <u>\$120</u>	<del>\$684</del> <u>\$718</u>	<del>\$103</del> <u>\$108</u>	<del>\$615</del> <u>\$646</u>
Three Bedroom, <del>Waterfront or Water View</del> , Claytor Lake, Bear Creek Lake, James River, Occoneechee, Lake Anna, Southwest Virginia Museum Poplar Hill Cottage	<del>\$120</del> <u>\$126</u>	<del>\$716</del> <u>\$752</u>	<del>\$108</del> <u>\$113</u>	<del>\$645</del> <u>\$677</u>
Hill Lodge (Twin Lakes)	<del>\$142</del> <u>\$149</u>	<del>\$849</del> <u>\$891</u>	<del>\$127</del> <u>\$133</u>	<del>\$764</del> <u>\$802</u>
Fairy Stone Lodge (Fairy Stone), Creasy Lodge (Douthat), Bel Air Mansion (Belle Isle)	<del>\$254</del> <u>\$267</u>	<del>\$1,527</del> <u>\$1,603</u>	<del>\$229</del> <u>\$240</u>	<del>\$1,373</del> <u>\$1,442</u>

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Douthat Lodge (Douthat), Hungry Mother Lodge (Hungry Mother), Potomac River Retreat (Westmoreland)	<del>\$300</del> <u>\$315</u>	<del>\$1,802</del> <u>\$1,892</u>	<del>\$270</del> <u>\$284</u>	<del>\$1,621</del> <u>\$1,702</u>
6-Bedroom Lodge, <del>Water View</del> : Kiptopeke, James River, Claytor Lake, Occoneechee, Bear Creek Lake, <del>Lake Anna</del>	<del>\$315</del> <u>\$331</u>	<del>\$1,888</del> <u>\$1,982</u>	<del>\$283</del> <u>\$297</u>	<del>\$1,698</del> <u>\$1,783</u>
OFF-SEASON CABIN AND LODGE RATES				
Cabin/Lodge Type	Per-Night Rental Fee	Per-Week Rental Fee	Per-Night Rental Fee	Per-Week Rental Fee
Efficiency	<del>\$59</del> <u>\$62</u>	<del>\$354</del> <u>\$372</u>	<del>\$54</del> <u>\$57</u>	<del>\$319</del> <u>\$335</u>
One Bedroom, Standard	<del>\$69</del> <u>\$72</u>	<del>\$415</del> <u>\$436</u>	<del>\$62</del> <u>\$65</u>	<del>\$373</del> <u>\$392</u>
One Bedroom, Waterfront or Water View	<del>\$77</del> <u>\$81</u>	<del>\$455</del> <u>\$478</u>	<del>\$68</del> <u>\$71</u>	<del>\$411</del> <u>\$432</u>
One Bedroom, Chippokes Plantation	<del>\$66</del> <u>\$69</u>	<del>\$392</del> <u>\$412</u>	<del>\$59</del> <u>\$62</u>	<del>\$353</del> <u>\$371</u>
Two Bedroom, Standard, all parks where available unless noted below	<del>\$80</del> <u>\$84</u>	<del>\$480</del> <u>\$504</u>	<del>\$71</del> <u>\$75</u>	<del>\$432</del> <u>\$454</u>
Two Bedroom, <del>Claytor Lake</del> , Bear Creek Lake, James River, Occoneechee, Lake Anna	<del>\$84</del> <u>\$88</u>	<del>\$503</del> <u>\$528</u>	<del>\$75</del> <u>\$79</u>	<del>\$452</del> <u>\$475</u>
Two Bedroom, Waterfront or Water View, all parks where available unless noted below	<del>\$88</del> <u>\$92</u>	<del>\$528</del> <u>\$554</u>	<del>\$79</del> <u>\$83</u>	<del>\$475</del> <u>\$499</u>
Two Bedroom, Waterfront or Water View, <del>Claytor Lake</del> , Bear Creek Lake, James River, Occoneechee, Lake Anna	<del>\$92</del> <u>\$97</u>	<del>\$553</del> <u>\$581</u>	<del>\$83</del> <u>\$87</u>	<del>\$497</del> <u>\$522</u>
Two Bedroom, First Landing, Chippokes Plantation	<del>\$76</del> <u>\$80</u>	<del>\$452</del> <u>\$475</u>	<del>\$68</del> <u>\$71</u>	<del>\$406</del> <u>\$426</u>
Three Bedroom, Standard, all parks where available unless noted below	<del>\$90</del> <u>\$95</u>	<del>\$543</del> <u>\$570</u>	<del>\$81</del> <u>\$85</u>	<del>\$488</del> <u>\$512</u>
Three Bedroom, Chippokes Plantation, Bel Air Guest House	<del>\$85</del> <u>\$89</u>	<del>\$512</del> <u>\$538</u>	<del>\$78</del> <u>\$82</u>	<del>\$462</del> <u>\$485</u>
Three Bedroom, <del>Waterfront or Water View</del> , Claytor Lake, Bear Creek Lake, James River, Occoneechee, Lake Anna, Southwest Virginia Museum Poplar Hill Cottage	<del>\$89</del> <u>\$93</u>	<del>\$537</del> <u>\$564</u>	<del>\$81</del> <u>\$85</u>	<del>\$484</del> <u>\$508</u>
Hill Lodge (Twin Lakes)	<del>\$118</del> <u>\$124</u>	<del>\$706</del> <u>\$741</u>	<del>\$106</del> <u>\$111</u>	<del>\$635</del> <u>\$667</u>
Fairy Stone Lodge (Fairy Stone), Creasy Lodge (Douthat), Bel Air Mansion (Belle Isle)	<del>\$211</del> <u>\$222</u>	<del>\$1,269</del> <u>\$1,332</u>	<del>\$191</del> <u>\$201</u>	<del>\$1,142</del> <u>\$1,199</u>
Douthat Lodge (Douthat), Hungry Mother Lodge (Hungry Mother), Potomac River Retreat (Westmoreland)	<del>\$250</del> <u>\$263</u>	<del>\$1,498</del> <u>\$1,573</u>	<del>\$226</del> <u>\$237</u>	<del>\$1,348</del> <u>\$1,415</u>
6-Bedroom Lodge, <del>Water View</del> : Kiptopeke, James River, Claytor Lake, Occoneechee, Bear Creek Lake, <del>Lake Anna</del>	<del>\$262</del> <u>\$275</u>	<del>\$1,570</del> <u>\$1,649</u>	<del>\$237</del> <u>\$249</u>	<del>\$1,412</del> <u>\$1,483</u>

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CAMPING CABINS, CAMPING LODGES, YURTS, AND TRAVEL TRAILERS (camping cabins, camping lodges, yurts, and travel trailers located in campgrounds and operated in conjunction with the campground)	Per-Night Rental Fee	Per-Week Rental Fee	Per-Night Rental Fee	Per-Week Rental Fee
Camping Cabin rental rate: (2-night minimum rental required)	<del>\$53</del> <u>\$56</u>	NA	<del>\$46</del> <u>\$48</u>	NA
Yurt rental: Standard fee	<del>\$93</del> <u>\$98</u>	<del>\$561</del> <u>\$589</u>	<del>\$84</del> <u>\$88</u>	<del>\$504</del> <u>\$529</u>
Travel Trailers: 25-30' Standard fee	<del>\$93</del> <u>\$98</u>	<del>\$561</del> <u>\$589</u>	<del>\$84</del> <u>\$88</u>	<del>\$504</del> <u>\$529</u>
Camping Lodges: Standard fee	<del>\$93</del> <u>\$98</u>	<del>\$561</del> <u>\$589</u>	<del>\$84</del> <u>\$88</u>	<del>\$504</del> <u>\$529</u>
Additional Cabin Fees:				
Additional Bed Rentals	\$3.00 per rental night			
Additional linens	\$6.00 per bed set			
Cabin Cancellation Fee: <u>Applies to all lodging in this section except as described below in "Lodge Cancellation Fee"</u>	\$20 per cancellation period: See <del>note notes 6 and 7 in the on</del> Cabin Transfer/Cancellation/Early Departure Policy <del>Note</del> .			
<u>Lodge Cancellation Fee: Applies to Fairy Stone Lodge, Douthat Lodge, Hungry Mother Lodge, Potomac River Retreat, and all 6-bedroom park lodges</u>	<u>\$50 per cancellation period: See notes on Cabin Transfer/Cancellation/Early Departure Policy</u>			
Pet Fee	<del>\$5.00</del> <u>\$10</u> per pet per night			
Pocahontas Group Cabins	DAY		WEEK	
Dining Hall: When rented alone; 8 a.m. to 10 p.m.	<del>\$225</del> <u>\$236</u>		<del>\$1,125</del> <u>\$1,181</u>	
Dining Hall: When rented with a minimum of two cabins.	<del>\$100</del> <u>\$105</u>		<del>\$500</del> <u>\$525</u>	
Cabin Units: per night – two units minimum in ecology camp.				
One Unit – Capacity: 28	<del>\$92</del> <u>\$97</u>		<del>\$462</del> <u>\$485</u>	
Two Units – Capacity: 56	<del>\$150</del> <u>\$158</u>		<del>\$751</del> <u>\$789</u>	
Three Units – Capacity: 84	<del>\$196</del> <u>\$206</u>		<del>\$982</del> <u>\$1,031</u>	
Four Units – Capacity: 112	<del>\$231</del> <u>\$243</u>		<del>\$1,155</del> <u>\$1,213</u>	
Complete Camp (Ecology Camp)	<del>\$347</del> <u>\$364</u>		<del>\$1,733</del> <u>\$1,820</u>	
Complete Camp (Group Camp #3)	<del>\$266</del> <u>\$279</u>		<del>\$1,328</del> <u>\$1,394</u>	
Refundable security deposit charged for all reservations	\$100 per reservation			

## Notes on Pocahontas Group Cabins:

Pocahontas Group Cabins: Reservations of more than \$200 require a 25% prepayment, due within 14 days of making the reservation, to hold a reservation. Balance of fees is due 60 days prior to the reservation start date. Reservations of less than \$200 require payment in full to confirm the reservation.

## Notes on cabins:

1. Seasonal cabin rates shall be in effect according to the following schedule, except for camping cabins, camping lodges, yurts, and travel trailers, which operate on the same schedule and season as the campground at that particular park. In the event that a weekly rental period includes two seasonal rates, the higher rate will apply for the entire weekly rental period.

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PARK	PRIME SEASON	MID-SEASON	OFF-SEASON
Bear Creek Lake*** Belle Isle Chippokes Plantation First Landing Kiptopeke*** Lake Anna*** Occoneechee*** Southwest Virginia Museum Staunton River Twin Lakes Westmoreland	Friday night prior to Memorial Day through the Sunday night prior to Labor Day	April 1 through the Thursday night prior to Memorial Day, and Labor Day through November 30	December 1 through March 31
Claytor Lake Douthat Fairy Stone Hungry Mother James River*** Smith Mountain Lake	Friday night prior to Memorial Day through the Sunday night prior to Labor Day, and October 1 through October 31	April 1 through the Thursday night prior to Memorial Day, and Labor Day through September 30, and November 1 through November 30	December 1 through March 31
***Cabin or lodge facilities will be added; exact dates of completion unknown.			

2. All dates refer to the night of the stay; checkout time is 10 a.m. and check-in time is 3 p.m.
3. The following holiday periods are charged prime season weekend rates: the Wednesday, Thursday, Friday, and Saturday period that includes Thanksgiving Day; and Christmas Eve and Christmas Day; and New Year's Eve and New Year's Day.
4. Cabin guests are allowed two vehicles per cabin per day without charge of parking fee. Additional vehicles must pay the prevailing parking fee for each day that the vehicle is parked in the park. The number of vehicles allowed to park at the cabin varies according to site design and other factors. All vehicles must park in designated parking areas, either at the cabin or in the designated overflow parking area.
5. Lodge guests are allowed six vehicles per lodge per day without charge of parking fee. Additional vehicles must pay the prevailing vehicle parking fee for each day the vehicle is parked in the park. The number of vehicles allowed to park at the lodge varies according to site design and other factors. All vehicles must park in designated parking areas, either at the lodge or in the designated overflow parking area.
6. Damage to cabins, not considered normal wear and tear, may be billed to the person registered for the cabin on an itemized cost basis.
7. Each member of the cabin rental party, up to the maximum allowable for the rented unit, may receive an entrance pass to the park's swimming facility on the basis of one pass per night of rental. Passes are only issued during days and seasons of operation of the swimming facility and are only good during the member's registered stay.
8. Employees of DCR and the members of committees and boards of DCR shall receive a discount of 50% on applicable cabin rates for any season, when the rental of such cabins is in connection with the official business of DCR or its committees or boards.

Notes on cabin transfer/cancellation/early departure policy:

1. Any fees to be refunded are calculated less the applicable cancellation fees listed below.
2. Fees paid to the reservation center by credit card will be refunded to the original credit card charged.
3. Fees paid by check or money order to the reservation center, or by any method at the park, will be refunded by state check.
4. A customer may move a cabin reservation to another date or park, referred to as a transfer, through the reservation center only, and prior to ~~the official check-in time on~~ 5 p.m. on the Monday before the scheduled date of arrival. After 5 p.m. on the Monday before the scheduled date of arrival, cancellation is the only option (see note 5 below) except that transfers to a

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different cabin for the same rental nights shall be allowed, subject to availability, up to the check in time for the original reservation.

5. If the reservation center will not be open again prior to the start of the reservation, transferring is not an option. If the transfer is not for the same number of nights, the cancellation policy may apply. Otherwise, there is no fee to transfer.

65. Once the reservation is paid for, a customer may cancel in full with payment of the required \$20 cancellation fee if there are more than 30 days before the scheduled arrival date. As long as the reservation is not during the one-week minimum stay requirement period, the length of stay may be reduced without a fee as long as there are more than 30 days before the scheduled arrival. However, the length of stay cannot be less than two nights. During the 30 days prior to the scheduled arrival date, the \$20 cancellation fee is charged for each night cancelled or reduced from the stay. Once the official check-in time on the scheduled arrival date is reached, the cancellation policy is no longer in effect and the early departure policy applies.

76. Once the 3 p.m. check-in time is reached on the scheduled day of arrival, any adjustment to a reservation is considered an early departure. There is a two night minimum charge associated with all cabin stays. Reducing the total nights stayed will incur a \$20 per night fee. If the original reservation was for a week, the weekly discount will no longer be valid and the fee will be adjusted to the nightly rate before any refunds are calculated.

## 4VAC5-36-110. Picnic shelters fees.

### PICNIC SHELTERS (TAXABLE)

<u>Two reservation periods are available per day, per shelter. The shelter rental periods shall be from park opening until park closing, unless otherwise specified.</u>	HALF-DAY	FULL-DAY DAY
Standard Small Picnic Shelter Rental Fee: Bear Creek Lake, Belle Isle, Caledon, Chippokes Plantation, Claytor Lake (including gazebo), Douthat, Holliday Lake, Hungry Mother (half shelter), Lake Anna, Natural Tunnel, New River Trail, Oconeechee, Pocahontas, Smith Mountain Lake, Twin Lakes, Westmoreland, York River, and all other small park picnic shelters.	\$30	<del>\$50</del> <u>\$53</u>
Standard Large Picnic Shelter Rental Fee: Belle Isle, Chippokes Plantation, Claytor Lake, Douthat Fairy Stone, First Landing, Grayson Highlands, Hungry Mother (full shelter), James River, Kiptopeke, Lake Anna, Natural Tunnel, Oconeechee, Pocahontas, Shenandoah, Smith Mountain Lake (Pavilion), Staunton River, Staunton River Battlefield, Twin Lakes, Westmoreland, York River, and all other large park picnic shelters.	\$45	<del>\$80</del> <u>\$84</u>
Shenandoah Large Group Shelter	\$50	<del>\$90</del> <u>\$95</u>
<u>York River: Plus Package: Fee for use of concession rental equipment and picnic shelter.</u>		
Small Shelter: Up to 25 people	\$90	\$105
Large Shelter: Up to 40 people	\$135	\$160
Each additional person over 25 people for the small shelter and over 40 people for the large shelter.	\$3.25	\$3.25
Leesylvania Shelter Rental	\$60	<del>\$120</del> <u>\$126</u>
Leesylvania: Lee's Landing Picnic Area Rental	\$30	<del>\$55</del> <u>\$58</u>
Leesylvania: Lee's Landing Picnic Shelter	\$200	<del>\$300</del> <u>\$315</u>
With 15 tables and 100 chairs	\$600	<del>\$700</del> <u>\$735</u>
Mason Neck Picnic Area Rental		
Without tent shelter	\$30	<del>\$55</del> <u>\$58</u>
With tent shelter (seasonably available)	\$60	<del>\$120</del> <u>\$126</u>
Chippokes Plantation Conference Shelter (with kitchen)	<del>\$100 per function</del>	<del>\$100</del> <u>\$105 per function</u>

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Chippokes Plantation Conference Shelter (without kitchen)	<del>\$60</del> per function	<del>\$60</del> <del>\$63</del> per function
Mini-Shelter: All parks where available unless otherwise noted.	N/A	<del>\$20</del> <del>\$21</del>
Event Tent Rental: Full day in-park rental only. Price includes set up and take down.		
Standard fee: All parks where available unless otherwise noted.	N/A	\$0.38 per square foot
Chippokes Plantation, Douthat, Kiptopeke, Lake Anna, Pocahontas, Shenandoah River, Sky Meadows, Smith Mountain Lake, York River.	N/A	\$0.45 per square foot
False Cape, First Landing, Leesylvania, Mason Neck.	N/A	\$0.50 per square foot
<u>Westmoreland: 20' x 40' tent with tables and chairs</u>		<u>\$400 per day</u>
White String Lights for Tent	N/A	\$0.80 per foot
Side Panels for Tent	N/A	\$1.50 per foot
Standard Shelter Cancellation Fee: Cancellation fee deducted from refund if refund is made more than 14 days prior to the reservation date. No refunds if cancellation made within 14 days prior to date. Shelter reservation may be transferred without penalty if the change is made through the reservations center prior to scheduled use.	<del>\$10</del>	\$10

**Notes on shelters:**

1. Full day shelter rental period shall be from park opening until park closing, for day use, unless otherwise specified.
2. Morning half day shelter rental period shall be from park opening until 2 p.m., unless otherwise specified.
3. Afternoon half day shelter rental period shall be from 3 p.m. until park closing unless otherwise specified.

**4VAC5-36-120. Amphitheater and gazebo fees.**

AMPHITHEATERS AND GAZEBOS (TAXABLE, Price here does not include tax)

Amphitheater or Gazebo Rental Fee: <u>The amphitheater or gazebo rental periods shall be from park opening until park closing unless otherwise specified.</u>	<del>HALF-DAY</del>	<del>FULL-DAY</del>
Leesylvania, Fairy Stone, Staunton River, Kiptopeke and all other amphitheaters and gazebos unless noted below.	<del>\$15</del>	<del>\$30</del> <del>\$32</del>
Claytor Lake (gazebo), Hungry Mother, Oconeechee, Westmoreland, New River Trail, Shenandoah River (overlook).	<del>\$30</del>	<del>\$50</del> <del>\$53</del>
Smith Mountain Lake, Natural Tunnel (gazebo at Cove Ridge), James River, First Landing (gazebo at Chesapeake Bay Center).	<del>\$40</del>	<del>\$70</del> <del>\$74</del>
York River and Douthat	N/A	<del>\$100</del> <del>\$105</del>
Natural Tunnel and First Landing Amphitheaters: Private group or company rate:	<del>\$150</del>	<del>\$300</del> <del>\$315</del>
Natural Tunnel and First Landing Amphitheaters: Educational group.	<del>\$75</del>	<del>\$150</del> <del>\$158</del>
Natural Tunnel Amphitheater Wedding Package: Three consecutive half-day rental periods.	N/A	<del>\$400</del> <del>\$420</del> per package

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First Landing: Courtyard at Chesapeake Bay Center; includes amphitheater and gazebo.	\$400	\$750 <del>\$788</del>
First Landing: Additional hourly charge for hours beyond 10 p.m. for gazebo.	\$10 per hour	\$10 <del>\$11</del> per hour
First Landing: Additional hourly charge for hours beyond 10 p.m. for Courtyard.	\$50 per hour	\$50 <del>\$53</del> per hour
Fishing Tournament Staging. All parks where available.	\$25	\$25 <del>\$26</del>
Pocahontas Amphitheater Area: Without Heritage Center. Includes Amphitheater, Exhibit Area, Restrooms and use of sound system.	NA	\$600 <del>\$630</del>
Pocahontas Amphitheater Area Plus Heritage Center	NA	\$800 <del>\$840</del>
Parking Attendant (per attendant).	NA	\$10 <del>\$11</del> per hour
Law Enforcement Officer (per officer).	NA	\$25 <del>\$26</del> per hour
Natural Tunnel: Rental of Observation Deck at mouth of tunnel for dinner parties. Includes use of chairlift for transportation of guests and supplies and set-up/take-down of tables and chairs.	\$300 per 4 hours	\$300 per 4 hours
Natural Tunnel Amphitheater Concession Building	N/A	\$40 <del>\$42</del>
Natural Tunnel: Sound System Rental	N/A	\$30 <del>\$32</del>
Stage Cover Rental:		
Occoneechee	\$25	\$25 <del>\$26</del>
Standard Amphitheater/Gazebo Cancellation Fee: Cancellation fee deducted from refund if refund is made more than 14 days prior to the reservation date. No refunds if cancellation made within fourteen days prior to date.	\$10	\$10 <del>\$11</del>
All parks unless listed below.	\$10	\$10 <del>\$11</del>
Pocahontas Amphitheater or First Landing Courtyard	\$100	\$100 <del>\$105</del>

## 4VAC5-36-130. Boat storage fees.

### BOAT STORAGE (TAXABLE, Price here does not include tax)

Boat Storage Fees	FEE
Standard Annual Boat Storage Fee: Bear Creek Lake, Douthat, Hungry Mother, and all other parks where available unless noted below.	\$35
Leesylvania Boat Storage Fees: Annual Fee (Dec. 1 – Nov. 30). Fee prorated for partial year on a months-remaining basis. Fee includes one park/launch pass per storage rental space to coincide with the rental period.	
Boat Length Up To 16'	\$685 <del>\$755</del>
Boat Length Up To 17'	\$728 <del>\$800</del>
Boat Length Up To 18'	\$771 <del>\$850</del>
Boat Length Up To 19'	\$814 <del>\$895</del>
Boat Length Up To 20'	\$857 <del>\$945</del>

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Boat Length Up To 21'	<del>\$900</del> <u>\$990</u>	
Boat Length Up To 22'	<del>\$942</del> <u>\$1,035</u>	
Boat Length Up To 23'	<del>\$985</del> <u>\$1,085</u>	
Boat Length Up To 24'	<del>\$1,050</del> <u>\$1,155</u>	
Boat Length Up To 25'	<del>\$1,100</del> <u>\$1,210</u>	
Leesylvania Canoe/Kayak Storage: Renter must possess an annual parking pass	\$10 per month	
Staunton River Boat Shed Fees: Does not include parking or launching fee, if applicable		
Nightly Storage	\$4.00	
Monthly Storage	\$15	
Six-Month Storage	\$70	
One-year boat storage	\$120 without annual park/launch pass \$150 with Buggs Island Special pass	
Claytor Lake: Boat Dock Slips:	FEE PER RENTAL SEASON	FEE PER RENTAL NIGHT
7' wide and under	<del>\$325</del> <u>\$360</u>	<del>\$8.00</del> <u>\$9.00</u>
9' wide and under	<del>\$506</del> <u>\$560</u>	<del>\$16</del> <u>\$18</u>
14' wide and under	<del>\$650</del> <u>\$715</u>	<del>\$16</del> <u>\$18</u>
Extended length slips	<del>\$550</del> <u>\$605</u>	

#### 4VAC5-36-140. Interpretive canoe, boat, and paddleboat fees.

##### INTERPRETIVE CANOE, BOAT, AND PADDLEBOAT PROGRAMS (NONTAXABLE)

Interpretive Canoe, Boat, and Paddleboat Tours:	FEE
Environmental Education Group Canoe Tour: Available only to bona fide educational groups. Requires previous reservation and arrangements. Minimum 4 persons. Mason Neck and all other parks where available unless otherwise noted.	\$3.00 per person
Standard Canoe Interpretive Tour Fee for Individuals: Applies to canoe, rowboat, or paddleboat tours. Child riding as third passenger, where allowed, is free.	
Individuals at all parks unless noted below.	\$5.00 per person
Individuals at Leesylvania, York River, Pocahontas, Kiptopeke.	\$9.00 per person
Individuals at Mason Neck.	<del>\$10</del> <u>\$15</u> per person
Individuals at Natural Tunnel.	\$12 per person
Individuals at False Cape: Back Bay Interpretive Tour.	\$16 per person
Family Groups at all parks unless noted below. Minimum 4 paying customers.	\$4.00 per person
Family Groups at Leesylvania, Pocahontas, York River, Kiptopeke. Minimum 4 paying customers.	\$6.00 per person

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Family Groups at Mason Neck.	<del>\$7.00</del> <u>\$9.00</u> per person
Group rate at Natural Tunnel (minimum 8 paying customers).	\$10 per person
Sunset, Moonlight, Dawn, or Extended Canoe Interpretive Tour Fee for Individuals: Applies to canoe, rowboat, or paddleboat tours.	
All parks where offered unless noted below.	\$6.00 per person
Sunset, Dawn, Extended Canoe Interpretive Tour Fee for Individuals: Leesylvania, York River, New River Trail, Pocahontas. Mason Neck.	\$11 per person <del>\$12</del> <u>\$15</u> per person
Moonlight/Night Canoe Interpretive Tour Fee for Individuals: Leesylvania, York River, Pocahontas. Mason Neck.	\$13 per person <del>\$15</del> <u>\$20</u> per person
Sunset, Moonlight, Dawn, or Extended Canoe Interpretive Tour Fee for Family Groups: Applies to canoe, rowboat, or paddleboat tours. Minimum four paying customers.	
All parks where offered unless otherwise noted.	\$5.00 per person
Sunset, Dawn, or Extended Canoe Interpretive Tour Fee for Family Groups: Leesylvania, Pocahontas, New River Trail, York River. Requires 4 or more paying customers. Mason Neck.	\$7.00 per person <del>\$9.00</del> <u>\$11</u> per person
Moonlight/Night Canoe Interpretive Tour Fee for Family Groups: Leesylvania, Pocahontas, and York River. Requires 4 or more paying customers.	\$8.00 per person
Overnight Canoe Tour: Mason Neck/ <u>Leesylvania/Widewater</u> (includes tents and dinner).	<del>\$50</del> <u>\$145</u> per person
Bear Creek Lake: Willis River Interpretive Canoe Tour	
Short Trip.	\$8.00 per person
Long Trip.	\$10 per person
Natural Tunnel Clinch River:	
Half-Day Trip Group Rate. Requires 8 or more paying customers.	\$12 per person
Full-Day Trip. Group Rate. Requires 8 or more paying customers.	\$20 per person
Half-Day Trip. Individuals.	\$15 per person
Full-Day Trip. Individuals.	\$25 per person
Overnight Trip. Individuals.	\$45 per person
Short Trip. Clinchport to Copper Creek	\$7.00 per person
Interpretive Kayak Tour, Solo Kayak: Westmoreland and other parks where available.	\$16 per person
Interpretive Kayak Tour, Tandem Kayak: Westmoreland and other parks where available unless otherwise noted.	\$22 per kayak
<del>Mason Neck Interpretive Kayak Tours (solo or tandem kayaks):</del>	
<del>Standard 2 hour tour</del>	<del>\$20 per person</del>
<del>Extended 4 hour tour</del>	<del>\$30 per person</del>

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All day kayak adventure	\$50 per person
Interpretive Pontoon Boat Tour: All parks where available.	\$2.00 (Age 3 through 12) \$3.00 (Age 13 and over)
Lake Excursion and Ecology Tour: All parks where available unless otherwise noted (limit 6 people per tour)	\$10 per person
Claytor Lake	\$15 (Age 13 and over)\$10 (Age 3 through 12)
Rental of Entire Boat (Exclusive Use) Claytor Lake and other parks where available	\$60 per tour

Note on Interpretive Canoe, Boat, and Paddleboat Programs:

Cancellation Policy for group reservations: Guest must cancel four days prior to the tour date in order to receive a refund. Any guest canceling less than four days before the start of the reservation will not be eligible for a refund. A one-time \$10 cancellation fee will apply per reservation regardless of number of boats reserved. In the event of inclement weather where the park must cancel, the guest will be offered either a complete refund or reservation transfer to another date.

#### 4VAC5-36-150. Interpretive and educational tours and program fees.

##### INTERPRETIVE AND EDUCATIONAL TOURS AND PROGRAMS (NONTAXABLE)

Interpretive and Educational Tours and Programs		
PARK	PROGRAM	FEE
All parks unless otherwise noted:	Standard Interpretive Program: (Fee does not apply to informational programs such as campfire programs or roving interpretation).	\$2.00 per person \$6.00 per family
	Standard Night Hike or Evening Program	\$3.00 per person \$8.00 per family
	Standard Wagon Ride Program	\$3.00 per person \$8.00 per family \$25 exclusive group
	Extended or Special Event Wagon Ride Program	\$4.00 per person \$10 per family <u>\$75 exclusive group booking</u>
	Park Outreach Program: Price per park staff member conducting program	\$10 for under 2 hours \$25 for 2 to 3 hours \$50 for 4 hours plus
	Standard Junior Ranger Program: 4-day program. All parks unless noted below.	\$10 full program \$3.00 per day
	Haunted Hike	\$1.00 (Age 3 through 12) \$3.00 (Age 13 and over)
<u>Occoneechee</u>	<u>Individual interpretive program pass: (Allows admission for one person to 4 interpretive programs valued at \$3.00 or less)</u>	<u>\$6.00 per pass</u>
	<u>Family interpretive program pass: (Allows admission for members of the same family to 4 interpretive programs valued at \$8.00 or less)</u>	<u>\$18 per pass</u>

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Pocahontas	Nature Camps	\$50 per 3-hour day for one week \$100 per 6-hour day for one week
	Curious Kids	\$3.00 per program
	Nature and Discovery Programs (School/Groups Outreach)	\$40 per hour at park \$60 per 1 and one-half hours at park \$80 per 2 hours at park \$50 per hour at school \$70 per 1 and one-half hours at school \$90 per 2 hours at school \$15 additional if over 30 miles from park
Sky Meadows	Music Program	\$5.00 per person
	A Day in Wildflower Woods	\$8.00 per person
	<u>Interpretive Program Series: 6-program series</u>	<u>\$15 per person per program</u> <u>\$54 per person per 4 programs</u> <u>\$72 per person per 6 programs</u>
Southwest Virginia Museum	How Our Ancestors Lived (9-week children's series)	\$10 per person for entire series \$2.00 per person for individual program
	Workshop (Adult)	\$10 per person
	Workshop (Children)	\$5.00 per person
Caledon	Caledon Eagle Tours	\$6.00 per person \$50 Flat Rate (minimum: 10; maximum: 20)
	All Group Programs up to 2 hours long	\$5.00 per person
	Haunted Hay Ride	\$12 per person
	Caledon Junior Ranger Program	\$15 per person
	Special Program Bus Fee: Programs involving transportation within the natural area.	\$3.00 per person
	<u>Workshop (Adult)</u>	<u>\$15 per person</u>
	<u>Workshop (Children)</u>	<u>\$5.00 per person</u>
Natural Tunnel: Cove Ridge	Guided Programs	\$25 per program (Maximum 30 participants) \$25 facility fee (If applicable)
	Environmental Education (Children's Activities)	\$25 per program (Maximum 30 participants) \$25 facility fee (If applicable)
	3 or More Activities	\$15 per program \$25 facility fee (If applicable)
	Environmental Education (Adult Facilitation)	\$15 per person
	Field Trips	Per program charge with use of center; chairlift passes, if required for program, included in cost
Hungry Mother/ Hemlock Haven	Junior Naturalist Program	\$4.00 per person per week \$12 unlimited participation in interpretive season
Kiptopeke	Birding Program (Hawk observatory/bird banding station)	\$4.00 per person

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	Birding Program (Group Rates)	\$35 (Corporate) \$25 (Nonprofit)
York River	Guided Adventure Programs	\$4.00 per person \$40 per group (Minimum 12 persons)
	York River Children's Programs	\$2.00 per person, single program \$10 unlimited participation throughout Interpretive Season
	"Nature Party": Nature Themed Birthday Party for Children	\$10 per person
Westmoreland	Guided Program Fee	\$25 per person
Mason Neck, Natural Tunnel	Junior Ranger Program (Includes T-Shirt)	\$35 per person
	Standard Wagon Ride Program	\$50 Exclusive Group Reservation
	Ranger Led Programs – Groups	\$3.00 per person
	Hay Wagon and Hot Dog Roast	\$10 per person
	Bike Tours - 2 hours	\$10 per person
	Extended Bike Tours - 4 hours	\$15 per person
	Canoe and Bike Tour - 4 hours	\$20 per person
	Halloween Haunted House/Hay Wagon Ride	<del>\$5.00 per person</del> \$3.00 (Age 3 through 12) \$5.00 (Age 13 and over)
	Canoe/Hay Wagon Ride	\$12 (Age 3 through 12) \$15 (Age 13 and over)
Mason Neck	<u>Halloween Haunted House/Hay Wagon Ride</u>	<u>\$5.00 per person</u>
	<u>Junior Ranger Program</u>	<u>\$50 per person</u>
Holliday Lake	Field Archaeology Workshop	\$25 per person
	Junior Ranger Program (3 half-day workshop) (Ages 6 to 13)	\$25 per child
False Cape	Wildlife Watch Tour – Per Person	<del>\$6.00</del> <u>\$8.00</u> per person
	<u>Astronomy Program</u>	<u>\$10 per person</u>
Staunton River	Junior Ranger Program	\$4.00 per session
	Interpretive Craft	\$2.00 per person
	Down A Lazy River Guided Canoe Trip	\$6.00 per child \$8.00 per adult
	Hayride	\$1.00 per person
First Landing	Junior Ranger Program	\$25 per person
	Kritter Kids	\$25 per person
Bear Creek Lake	Interpretive bike tours	\$3.00 per person
Leesylvania	Junior Ranger Program	<del>\$35</del> <u>\$45</u> per person

# Regulations

	Halloween Haunted Hike	\$2.00 per person \$6.00 per group (4 person maximum)
	Interpretive Programs	\$2.00 per person
	Kids Fishing Tournament	\$2.00 per child
Natural Tunnel	Pannel Cave Tour	\$10 per person \$7.00 per person (Family-Group; 8-person minimum)
	Bolling Cave Tours	\$15 per person \$12 per person (Family-Group; 8-person minimum)
	Stock Creek Tunnel Tour	\$5.00 per person
Westmoreland	Orienteering Program	\$3.00 per person \$25 per group (20 maximum)
New River Trail	New River Trail Seniors Van Tour Full Day	\$25 per person
	New River Trail Seniors Van Tour Half Day	\$15 per person
James River	Haunted Wagon Ride	\$5.00 per person (Age 7 and over) Children 6 and under free
<u>Belle Isle</u>	<u>Triple Treat Program:</u> <u>Hayride/Canoe/Campfire</u>	<u>\$10 per person</u>

Notes on interpretive and educational tours and programs:

Additional costs for supplies and materials may apply.

#### 4VAC5-36-200. Miscellaneous rental fees.

##### RENTALS (TAXABLE; Price here does not include tax)

Bike Rentals (includes helmet)	FEE
All parks where available unless otherwise noted	\$3.00 per hour \$8.00 per half-day \$15 per full-day
Claytor Lake	\$4.00 per hour \$25 per day
New River Trail, James River, <u>Mason Neck</u>	\$5.00 per hour \$12 per half-day \$18 per day
First Landing	\$5.00 per hour \$16 per day
Bike Helmet without bike rental	\$1.00
Child Cart for bike	\$5.00
Boat Rentals	
Standard Paddle Boat Rental:	
All parks where available unless otherwise noted	\$4.00 per half-hour \$6.00 per hour

## Regulations

<u>Fairy Stone</u>	<u>\$8.00 per hour</u>
Smith Mountain Lake: Paddleboat	\$10 per half-hour \$15 per one hour \$60 for 24 hours \$30 additional for each day after first day
Standard Canoe Rental:	
All parks where available unless otherwise noted.	\$8.00 per hour \$15 per half-day \$25 per full-day \$40 for 24 hours \$100 per week
Smith Mountain Lake	\$8.00 per half-hour \$12 per one hour \$60 for 24 hours \$30 additional for each day after first day
Claytor Lake	\$8 per hour \$25 per half-day \$40 per day \$50 per 24 hours
Leesylvania, Mason Neck	<u>\$7.00 per half-hour</u> \$12 per hour \$35 per half-day \$50 per day \$60 per 24 hours
James River	\$10 per hour (does not include shuttle) \$40 per day (does not include shuttle) \$120 per week (does not include shuttle) \$12 per half hour past return time
Standard Float Trips:	
Shenandoah River	\$5.00 per person
James River	
Bent Creek to Canoe Landing:	
Canoe	\$45 Max 3 people
Single Kayak	\$35 per kayak
Double Kayak	\$45 per kayak
Canoe Landing to Dixon Landing:	
Tubes	\$10 per tube
Group of four or more	\$8.00 per tube
Canoe	\$15 per canoe
Single Kayak	\$15 per kayak
Double Kayak	\$15 per kayak

# Regulations

Bent Creek to Dixon Landing:	
Canoe	\$50 per canoe
Single Kayak	\$40 per kayak
Double Kayak	\$50 per kayak
Shuttle Service Only:	
Bent Creek Shuttle	\$5.00 per boat (canoe/kayak) \$5.00 per person
Tubes	\$5.00 per person/Bent Creek Shuttle \$2.00 between landings in park
Late Fee	\$12 per half hour past return time
New River Trail	\$7.00 per hour \$20 per half-day \$30 per day \$35 per half-day, includes canoe rental and shuttle \$50 per full day, includes canoe rental and shuttle
Canoe Rental (includes shuttle)	
Trip A: Austinville to Foster Falls	\$35 per canoe
Trip B: Ivanhoe to Austinville	\$45 per canoe
Trip C: Ivanhoe to Foster Falls	\$50 per canoe
Trip D: Foster Falls to Route 100	\$45 per canoe
Trip E: Route 100 to Allisonia	\$50 per canoe
Trip F: Foster Falls to Allisonia	\$55 per canoe
Kayak Rental (includes shuttle)	
Trip A: Austinville to Foster Falls	\$25 per kayak
Trip B: Ivanhoe to Austinville	\$35 per kayak
Trip C: Ivanhoe to Foster Falls	\$40 per kayak
Trip D: Foster Falls to Route 100	\$35 per kayak
Trip E: Route 100 to Allisonia	\$40 per kayak
Trip F: Foster Falls to Allisonia	\$45 per kayak
Standard Rowboat Rental, without motor:	
All parks where available unless otherwise noted	\$6.00 per hour \$12 per half-day \$22 per full-day \$36 per 24 hours \$80 per week
Hungry Mother: Rowboats	\$4.00 per hour \$15 per day \$40 per week

## Regulations

New River Trail: Rafts and flat-bottom boats	\$7.00 per hour \$20 per half-day \$30 per day
Standard Rowboat Rental with electric motor and battery: All parks where available unless otherwise noted	\$10 per hour \$20 per 4 hours \$36 per day \$100 per 4 days \$150 per week
Standard Motorboat Rental, 16-foot console steering, 25-45 horsepower outboard. All parks where available.	\$18 per hour \$90 per day
Standard Fishing Boat Rental with gasoline motor and one tank of fuel: All parks where available.	\$10 per hour (2-hour minimum) \$50 per day
Pedal Craft Rental: (Hydro-Bike, Surf-Bike, etc.) All parks where available unless otherwise noted.	
One person.	<del>\$6.00</del> <u>\$8.00</u> per hour
Two person.	<del>\$8.00</del> <u>\$10</u> per hour
Smith Mountain Lake: Hydro Bike	\$8.00 per half hour \$12 per hour \$4.00 additional per hour after first hour \$60 per 24 hours \$30 additional per day after first day
Barracuda Boat. All parks where available	\$10 per hour
Solo Kayak Rental:	
All parks where available unless otherwise noted	\$8.00 per hour \$15 per half-day \$25 per full-day \$40 for 24 hours \$100 per week
Smith Mountain Lake	\$8.00 per half hour \$12 per hour \$60 per 24 hours \$30 additional per day after first day
Mason Neck	<del>\$6.00</del> per half-hour \$10 per hour \$35 per half-day \$50 per day \$60 per 24 hours
New River Trail	\$7.00 per hour \$20 per half-day \$30 per day
James River	\$7.00 per hour (does not include shuttle) \$20 per day (does not include shuttle) \$80 per week (does not include shuttle) \$12 per half hour past return time

# Regulations

Tandem Kayak Rental:	
All parks where available unless otherwise noted.	\$10 per hour \$20 per half-day \$30 per full-day \$45 for 24 hours \$120 per week
James River	\$10 per hour (does not include shuttle) \$35 per day (does not include shuttle) \$120 per week (does not include shuttle) \$12 per half hour past return time
<u>Mason Neck</u>	<u>\$8.00 per half-hour</u> <u>\$15 per hour</u> <u>\$45 per 4 hours</u> <u>\$60 per day</u>
Smith Mountain Lake: 14-foot fishing boat with 5 hp (3 person capacity). Rental does not include fuel and oil. Damage deposit of \$200 required.	\$50 for 3-hours \$10 additional per hour after first 3 hours \$150 for 24 hours \$30 additional per day after first day
Claytor Lake: 14-foot Jon boat with 8 hp motor Damage deposit of \$40 required	\$15 per hour \$45 per half-day \$65 per day \$78 per 24 hours
Claytor Lake: 14.5-foot fishing boat with 9.9 hp motor Damage deposit of \$40 required	\$17 per hour \$50 per half-day \$75 per day \$90 per 24 hours
Claytor Lake: 14-foot v-hull boat with 25 hp motor Damage deposit of \$75 required	\$25 per hour \$65 per half-day \$100 per day \$120 per 24 hours
Claytor Lake: 17-foot v-hull with 140 hp motor Damage deposit of \$150 required	\$45 per hour \$110 per half-day \$175 per day \$210 per 24 hours
Claytor Lake: 21-foot pontoon boat with 50 hp motor. Damage deposit of \$150 required	\$45 per hour \$110 per half-day \$175 per day \$210 per 24 hours
Claytor Lake: 20-foot bowrider. Damage deposit of \$150 required	\$60 per hour \$135 per half day \$210 per day
Claytor Lake: Water Sports Pontoon and Equipment Package: Includes 24-foot pontoon boat, 2 kayaks, tubing, and ski vests.	\$300 per day
Claytor Lake: Water Sports Speed Boat and Equipment Package: Includes 17-foot bowrider, water skis, kneeboard, towrope, ski ropes, and ski vests.	\$250 per day

## Regulations

Occoneechee: 17-1/2-foot fishing boat. Rental includes 30 gallons of fuel. Damage deposit of \$200 required	\$85 per hour \$20 additional per hour after first hour \$175 per 8 hours \$875 per 7 day week
Occoneechee: 20-foot pontoon boat with motor (8 person capacity) Rental includes 30 gallons of fuel. Damage deposit of \$200 required.	\$85 per hour \$20 additional per hour after first hour \$175 per 8 hours \$875 per 7 day week
Occoneechee: 22-foot pontoon boat with motor (10 person capacity) Rental includes 30 gallons of fuel. Damage deposit of \$200 required.	\$95 per hour \$20 additional per hour after first hour \$185 per 8 hours \$925 per 7 day week
Smith Mountain Lake: 18-20-foot Runabout with 190 hp (8 person capacity). Rental does not include fuel and oil. Damage deposit of \$200 required.	\$150 for 3 hours \$20 additional per hour after first 3 hours \$240 per 8 hours \$305 for 24 hours \$100 additional per day after first day
Claytor Lake: 18-foot pontoon boat (7 person capacity) Damage deposit of \$100 required	\$35 per hour \$95 per 4 hours \$160 per 8 hours \$192 per 24 hours
Claytor Lake: 22-foot pontoon boat (11 person capacity) Damage deposit of \$150 required	\$55 per hour \$125 per 4 hours \$200 per 8 hours \$240 per 24 hours
Smith Mountain Lake: 24-foot pontoon boat with 40 hp (10-12 person capacity).	\$80 for 3 hours \$20 additional per hour after first 3 hours \$160 per 8 hours \$200 for 24 hours \$80 additional each day after first day
Smith Mountain Lake: Personal Watercraft (Waverunner 700). Rental does not include fuel and oil. Damage deposit of \$500 required.	\$150 for 3 hours \$20 additional per hour after first 3 hours \$240 per 8 hours \$305 for 24 hours \$100 additional per day after first day
Belle Isle: Motorboat less than 25 horsepower (6 gallons of fuel included, 2 hour minimum)	\$15 per hour \$90 per day
Belle Isle: Motorboat 25-49 horsepower (11 gallons of fuel included, 2 hour minimum)	\$22 per hour \$110 per day
Standard Damage/Replacement Fees: All parks where available unless otherwise noted. Not required for damage due to normal wear and tear.	
Paddle	\$20
Anchor/Rope	\$40
Fuel Tank/Hose	\$60
Fire Extinguisher	\$25

# Regulations

Throw Cushion	\$10
Propeller (small)	\$100
Propeller (large)	\$135
Other Rentals:	
Personal Flotation Device (PFD): When separate from boat rental.	\$1.00 per day
Smith Mountain Lake, James River: Personal Flotation Device, type II.	\$5.00 for first day \$1.00 additional days
Smith Mountain Lake: Personal Flotation Device, type III	\$7.00 for first day \$2.00 additional days
Canoe/Kayak Paddles: All parks where available unless otherwise noted.	\$5.00 per day
New River Trail: Float Tubes	\$10 per day
James River:	
Cooler Tubes	\$3.00 per day
Seat Backs (kayaks)	\$3.00 per day
Tubes	\$8.00 per hour (does not include shuttle) \$20 per day (does not include shuttle) \$12 per half hour past return time
Claytor Lake: 2-person tow tube and towrope (with rental of boat only)	\$20 per 2 hours \$25 per half-day \$30 per day
Claytor Lake: Water skis and towrope (with rental of boat only)	\$20 per 2 hours \$25 per half-day \$30 per day
Claytor Lake: Kneeboard and towrope (with rental of boat only)	\$15 per 2 hours \$20 per half-day \$25 per day
Smith Mountain Lake: Tow tube; Water Skis; Knee Board	\$15 per day with boat rental \$25 per day without boat rental
Smith Mountain Lake: Wake Board	\$25 per day with boat rental \$30 per day without boat rental
Mobile Pig Cooker: All parks where available unless otherwise noted.	\$40 per day
Volleyball Net and Ball Rental: All parks where available.	\$10
Binocular Rentals (2 hours): All parks where available.	\$2.00
Beach Floats: All parks where available.	\$1.00 per hour \$3.00 for 4-hours \$5.00 for full-day
Surf Lounge Floating Chair Rental. All parks where available.	\$2.00 per hour, single chair \$5.00 per half-day, single chair \$7.00 per full day, single chair \$3.00 per hour, double chair \$7.00 per half-day, double chair \$10 per full day, double chair

## Regulations

Body Board: First Landing	\$6.00 per day
Beach Umbrella: All parks where available unless otherwise noted.	\$3.00 per hour \$8.00 for 4 hours \$15 for full-day
First Landing	\$6.00 per day
Kiptopeke	\$5.00 per 4 hours \$8.00 per 8 hours
Beach Chair: All parks where available	\$5.00 per day
First Landing	\$6.00 per day
Fishing Rods: All parks where available unless otherwise noted.	\$5.00 per half-day
First Landing	\$6.00 per day \$3.00 per rod per fishing program
Tents with a group camp reservation. All parks where available.	
2-person tent	\$12 per day
3-person tent	\$20 per day
4-person tent	\$25 per day
5-person tent	\$30 per day
Coin-Operated Washing Machine: All parks where available unless otherwise noted.	\$1.25 per load, tax included
Coin Operated Dryer: All parks where available unless otherwise noted.	\$1.25 per load, tax included
6-Foot Table (Includes 6 chairs) Additional chairs:	\$20 per rental period \$3.00 each per rental period
Pump Out: All parks where available unless otherwise noted.	\$5.00
Horse Rentals:	
All parks where available unless otherwise noted.	\$20 per one-hour ride \$40 per two-hour ride \$100 per full day ride
Sky Meadows	\$30 per one-hour ride \$55 per two-hour ride \$45 per 1.5-hour theme ride \$10 pony rides, includes photo \$250 per week, day camp (10% family discount)
Pony Rides: All parks where available unless otherwise noted.	\$5.00 per 15 minutes
Horseback Riding Lessons: All parks where available unless otherwise noted.	\$25 per lesson on group basis \$30 per lesson for individual
Horseback Summer Day Camp: All parks where available unless otherwise noted.	\$180 per person per week

# Regulations

Horseshoe or Croquet Rental for Campers. All parks where available.	\$1.00 per hour \$5.00 per day \$20 deposit
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## 4VAC5-36-210. Conference center and meeting facility fees.

### CONFERENCE CENTERS (TAXABLE)

Prices may be discounted and/or waived by the director when necessary to create competitive bids for group sales.	FEE
Hemlock Haven Conference Center at Hungry Mother	
Main Hall (Capacity: 375)	<del>\$250</del> <u>\$263</u> per day
Upper Level (Capacity: 50)	<del>\$150</del> <u>\$158</u> per day
Redbud Room: (Capacity 35)	<del>\$50</del> <u>\$53</u> per day
Laurel Room (Capacity: 20)	<del>\$35</del> <u>\$37</u> per day
Entire Meeting Room Complex	<del>\$400</del> <u>\$420</u> per day
Day Use Recreational Package (Includes all outside recreational facilities)	
0 – 250 Persons	<del>\$250</del> <u>\$263</u> per half-day <del>\$500</del> <u>\$525</u> per full-day
250 – 500 Persons	<del>\$375</del> <u>\$394</u> per half-day <del>\$750</del> <u>\$788</u> per full-day
500 + persons	<del>\$500</del> <u>\$525</u> per half-day <del>\$1,000</del> <u>\$1,050</u> per full-day
Cedar Crest Conference Center at Twin Lakes	
Complex: Doswell Hall with deck, grounds, volleyball, horseshoes; Kitchen, Latham and Hurt Rooms NOT included.	<del>\$218</del> <u>\$229</u> per 4 hours <del>\$437</del> <u>\$459</u> per day <del>\$50</del> <u>\$53</u> each extra hour
Doswell Meeting Room: Meeting Room Only; no kitchen or dining room.	<del>\$156</del> <u>\$164</u> per room per 4 hours <del>\$312</del> <u>\$328</u> per room per day <del>\$35</del> <u>\$37</u> each extra hour
Small breakout rooms with main room: Latham and Hurt.	<del>\$62</del> <u>\$65</u> per room per 4 hours <del>\$125</del> <u>\$131</u> per room per day <del>\$20</del> <u>\$21</u> each extra hour
Small breakout rooms without main room.	<del>\$93</del> <u>\$98</u> per room per 4 hours <del>\$187</del> <u>\$196</u> per room per day <del>\$35</del> <u>\$37</u> each extra hour
Picnic Shelter or Gazebo at Cedar Crest.	<del>\$65</del> <u>\$68</u> per 4 hours <del>\$125</del> <u>\$131</u> per day <del>\$10</del> <u>\$11</u> each extra hour
Kitchen rental Only available with complex rental.	<del>\$100</del> <u>\$105</u> per event
Kitchen Cleaning Fee: Deposit.	\$150 per event
Chippokes Plantation Meeting, Conference, and Special Use Facilities	
Mansion Conference Room.	<del>\$25</del> <u>\$26</u> per hour

## Regulations

Mansion or Historic Area Grounds (Includes parking for party rental).	<del>\$500</del> <u>\$525</u> per 4 hours	
Mansion Board Room	<del>\$100</del> <u>\$105</u> per 4 hours	
Chippokes Plantation Conference Shelter (Available on reservation basis only).	<del>\$100</del> <u>\$105</u> per 4 hours	
Wedding Package (includes historic area grounds, gardens, tent set up and take down, 10 60-inch round tables, 10 standard size rectangle tables, 100 folding chairs, Wedding Coordinator, changing room for bride and groom, Mansion kitchen area, boardroom, no fee for wedding rehearsal).	<del>\$1,345</del> <u>\$1,412</u> per 4 hours <del>\$1,975</del> <u>\$2,073</u> per 8 hours \$50 nonrefundable reservation fee	
Southwest Virginia Museum – Victorian Parlor Room Rental (Based on 4-hour rental)	DAY	EVENING
Option #1: Victorian Parlor – Basic Room Package (Includes tables with linen and chairs)		
Up to 22 People (6 tables – 22 chairs)	<del>\$30</del> <u>\$31</u>	<del>\$55</del> <u>\$57</u>
23 to 30 People (8 tables – 30 chairs) OR Up to 50 people (50 chairs and head table)	<del>\$40</del> <u>\$42</u>	<del>\$65</del> <u>\$68</u>
Option #2: Victorian Parlor – Executive Room Package (Includes tables with linen and chairs, water pitcher with glasses, coffeepot with cups (coffee not included), AV equipment, and presentation aids)		
Up to 22 People (6 tables – 22 chairs)	<del>\$50</del> <u>\$52</u>	<del>\$75</del> <u>\$78</u>
23 to 30 People (8 tables – 30 chairs) OR Up to 50 people (50 chairs and head table)	<del>\$65</del> <u>\$68</u>	<del>\$90</del> <u>\$94</u>
Option #3: Additional meeting rooms: Victorian Parlor must be rented in order to rent additional rooms.		
Hallway (downstairs) (Includes two existing tables with linens)	<del>\$10</del> <u>\$11</u>	<del>\$10</del> <u>\$11</u>
Each Additional Table with Linens	<del>\$10</del> <u>\$11</u>	<del>\$10</del> <u>\$11</u>
Small Parlor: AV room or Big Stone Gap Photo room (Includes 1 table with linens and 6-8 chairs)	<del>\$30</del> <u>\$31</u>	<del>\$30</del> <u>\$31</u>
Big Stone Gap Development Room (Includes 1 table with linens and 6-8 chairs)	<del>\$40</del> <u>\$41</u>	<del>\$40</del> <u>\$41</u>
Additional Hours	\$5.00 per hour	\$5.00 per hour
Wedding Portraits	<del>\$50</del> <u>\$52</u> per 2 hours	<del>\$75</del> <u>\$78</u> per 2 hours
Wilderness Road (Mansion and Ground Rental)		
Mansion or Lawn: separately	<del>\$60</del> <u>\$63</u> for 4 hours	
Mansion and Lawn: combined	<del>\$100</del> <u>\$105</u> for 4 hours	
Additional hours beyond scheduled operating hours	<del>\$10</del> <u>\$11</u> per hour	
Cove Ridge Center at Natural Tunnel:	PRIVATE FEE	EDUCATIONAL FEE

# Regulations

Cove Ridge Center Annual Membership: Membership entitles organization to a 25% discount on facility rental fees and group rates on all programming offered through the center.	<del>\$1,000</del> <u>\$1,050</u> per year	<del>\$500</del> <u>\$525</u> per year
Day Use: Exclusive use of the auditorium, meeting room, resource library, catering kitchen, great room with stone fireplace and deck for two consecutive half-day rental periods, and parking passes.	<del>\$300</del> <u>\$315</u>	<del>\$200</del> <u>\$210</u>
Overnight Use of one dorm: Includes Day Use Package plus one dorm rooms for one night and swimming (in season).	<del>\$650</del> <u>\$683</u>	<del>\$475</del> <u>\$498</u>
Overnight Use of both dorms: Includes Day Use Package plus two dorm rooms for one night and swimming (in season).	<del>\$850</del> <u>\$892</u>	<del>\$625</del> <u>\$656</u>
Wedding Package Day Use: Exclusive use of the auditorium, meeting room, resource library, catering kitchen, great room with stone fireplace and deck for three consecutive half-day rental periods, and parking passes.	<del>\$500</del> <u>\$525</u>	NA
Wedding Package Overnight: Includes Day Use Package plus one dorm for one night and swimming (in season).	<del>\$875</del> <u>\$919</u>	NA
Wedding Package Overnight: Includes Day Use Package plus both dorms for one night and swimming (in season).	<del>\$1,050</del> <u>\$1,102</u>	NA
Wedding Package with Amphitheater: Rental of the park amphitheater in conjunction with any of the above wedding packages.	<del>\$225</del> <u>\$236</u> for the rental period	NA
Removal of furniture from great room (only available with exclusive use of the center).	<del>\$40</del> <u>\$42</u>	<del>\$40</del> <u>\$42</u>
Additional seating on deck (only available with exclusive use of the center).	<del>\$40</del> <u>\$42</u>	\$0
Auditorium	<del>\$120</del> <u>\$126</u> per half day <del>\$220</del> <u>\$231</u> per full day	<del>\$95</del> <u>\$99</u> per half day <del>\$175</del> <u>\$183</u> per full day
Classroom – Library (half-day)	<del>\$60</del> <u>\$63</u>	<del>\$30</del> <u>\$31</u>
One dorm: Overnight lodging for up to 30, includes swimming (in season) and parking passes.	<del>\$400</del> <u>\$420</u> per night April 1-October 31 <del>\$360</del> <u>\$378</u> per night November 1-March 31	<del>\$300</del> <u>\$315</u> per night April 1-October 31 <del>\$270</del> <u>\$283</u> per night November 1-March 31
Both Dorms: Overnight lodging for up to 60, includes swimming (in season) and parking passes.	<del>\$600</del> <u>\$630</u> per night April 1-October 31 <del>\$540</del> <u>\$567</u> per night November 1-March 31	<del>\$450</del> <u>\$472</u> per night April 1-October 31 <del>\$405</del> <u>\$425</u> per night November 1-March 31
Per Person Student Rate for Overnight Dorm Use	<del>\$12.50</del> <u>\$13</u> per person	<del>\$12.50</del> <u>\$13</u> per person
Kitchen Use (when not included in package)	<del>\$25</del> <u>\$26</u> per event	<del>\$25</del> <u>\$26</u> per event

## Regulations

Heritage Center at Pocahontas: All reservations require 50% down at time of reservation (Nonrefundable within 14 days of event)	PRIVATE FEE	EDUCATIONAL FEE
Large Room (Capacity: seated at tables 50; reception style 125, auditorium 80: includes tables, chairs and warming kitchen)	<del>\$125</del> <u>\$131</u> per 4 hours <del>\$225</del> <u>\$236</u> per full-day <del>\$25</del> <u>\$26</u> each extra hour	<del>\$75</del> <u>\$78</u> per 4 hours <del>\$135</del> <u>\$141</u> per full-day \$15 each extra hour
Westmoreland		
Tayloe and Helen Murphy Hall Meeting Facility: <u>Includes Main Meeting Room, Kitchen, and Grounds</u>	<del>\$125</del> (Up to 6 hours) <del>\$225</del> <u>\$350</u> (8 a.m. to 10 p.m.) <u>\$315 additional rental days after first day</u> <u>\$25 per hour for usage beyond reservation period</u>	
<u>Breakout Meeting Room (May be rented separately from main meeting room only within 45 days of event.</u>	<u>\$75 (8 a.m. to 10 p.m.)</u>	
<u>Kitchen Clean Up Fee: (Waived if renter cleans facility)</u>	<u>\$250 per event</u>	
Wedding Package - Includes half-day rental for wedding rehearsal, and a full-day rental for wedding/reception	\$300	
Potomac River Retreat: Table and Chair Set-up	\$40	
Fairy Stone		
Fayerdale Hall Meeting Facility	<del>\$225</del> <u>\$236</u> (8 a.m. to 10 p.m.)	
Wedding Package - Includes full-day rental for wedding rehearsal, and a full-day rental for wedding/reception.	<del>\$300</del> <u>\$315</u>	
Douthat		
Restaurant (includes table set-up)	<del>\$225</del> <u>\$236</u>	
Allegheny Room: Up to 30 persons.	<del>\$150</del> <u>\$158</u> per day	
Wedding Package: Conference room and amphitheater (see "amphitheater section") on day of wedding, plus an extra half-day amphitheater for rehearsal.	<del>\$275</del> <u>\$289</u>	
First Landing		
Trail Center Conference Room (Capacity: 45)	<del>\$40</del> <u>\$42</u> per half-day <del>\$60</del> <u>\$63</u> per full-day	
Lake Anna		
Visitor Center	<del>\$30</del> <u>\$32</u> per half-day <del>\$50</del> <u>\$53</u> per full day	
<u>Concessions Building Rental</u>	<u>\$100 per day</u>	
Bear Creek Lake		
Meeting facility	<del>\$225</del> <u>\$236</u> per day <del>\$125</del> per four hours \$25 each extra hour	

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Wedding Package	\$ <del>300</del> <u>\$315</u> per day
Claytor Lake	
Marina Meeting Facility	\$ <del>350</del> <u>\$400</u> per day
Wedding Package: Includes rental of facility for two consecutive days (8 a.m. to 10 p.m.), chairs and tables. Linens are not included in the rental package.	\$ <del>650</del> <u>\$700</u>
Meeting Package: Includes rental of facility for three consecutive days (8 a.m. to 10 p.m.), all usage of audiovisual equipment. Linens are not included in the rental package.	\$ <del>950</del> <u>\$1,000</u>
Leesylvania Wedding/Function Package: Includes Rental of: Lee's Landing Picnic Shelter, 100 Chairs, 15 Tables, and Parking for up to 50 vehicles	\$ <del>800</del> <u>\$840</u> per half-day \$ <del>900</del> <u>\$945</u> per full-day
Mason Neck	
Wedding Package: 20 foot by 40 foot tent, 100 chairs, parking for up to 50 cars	\$ <del>750</del> <u>\$788</u> per event
Parking Attendant	\$ <del>50</del> <u>\$53</u> per 4 hours
Smith Mountain Lake	
Meeting room at Visitor Center	\$ <del>150</del> <u>\$158</u> per day
Exceeding approved hours. All parks unless otherwise noted below.	\$ <del>20</del> <u>\$25</u> per hour
Sky Meadows	
<u>Timberlake House Meeting Room</u>	\$50 per half-day <u>\$75</u> per day
<u>Timberlake House Kitchen (in conjunction with rental of meeting room)</u>	<u>\$25</u> per day or part of day
Equipment and Services Associated with Meetings and Rentals:	
Microphone/Podium Rental	\$15 per day
Linen Rentals:	
Table cloth only	\$3.00 per table
Place settings	\$2.00 each
Twin Lakes	
Overlay	\$1.25 per table
Napkins	\$0.40 per napkin
Fax	First 2 pages free \$2.00 each extra page
Copies	Single copy free \$0.15 each extra copy
Lost Key Fee	\$10
Easels	\$5.00 per day
Overhead Projector	\$10 per day
TV with VCR	\$10

## Regulations

Second TV	\$10
Overhead Projector with Screen	\$10
Slide Projector with Screen	\$10
Flip Chart	\$10
<u>Event Clean Up Fees</u>	
<u>Park labor to clean up after special events and facility rentals if not done in accordance with rental agreement or use permit</u>	<u>\$50 per hour</u>

Notes on conference and meeting facilities fees:

Conference and meeting facilities require a 30% prepayment due 10 days after making reservation, and payment of the full balance prior to or on the first day of the reservation. Cancellations made 14 or more days prior to the first day of the reservation shall be charged the lesser of 10% of the total fee or \$100. Cancellations made less than 14 days prior to the first date of the reservation shall be charged 30% of the total fee.

#### **4VAC5-36-220. Administrative and processing fees.**

Returned Check Fee	\$35
Special Use Application Fee: Special use Permits, issued by the park, are required for special events, collecting permits, and unusual usage of the park that may interfere with other park visitors, place special demands on park resources, or create unusual risk. The fee is nonrefundable.	\$10
Replacement fee for annual pass: no replacement fee required for Golden Disability Pass.	\$10
<del>Handicapped</del> <u>Disabled</u> Visitor Motorized Vehicle Annual Pass Processing Fee: New River Trail. Applies to specially permitted <del>handicapped</del> <u>disabled</u> vehicles and transportation devices allowed within the park. Fifteen dollars of the processing fee is refundable if permit is denied.	\$25

VA.R. Doc. No. R08-1004; Filed November 6, 2007, 2:43 p.m.

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# Regulations

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## BOARD OF GAME AND INLAND FISHERIES

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of §2.2-4002 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The board is required by §2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

### Final Regulation

**Title of Regulation:** **4VAC15-200. Game: Rabbit and Hares (amending 4VAC15-200-10).**

**Statutory Authority:** §§29.1-501 and 29.1-502 of the Code of Virginia.

**Effective Date:** October 26, 2007.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

#### Summary:

*The amendment changes the closing date of the rabbit season from February 14 to the last day in February, statewide.*

#### **4VAC15-200-10. Open season; generally.**

Except as otherwise specifically provided by the sections appearing in this chapter, it shall be lawful to hunt rabbit from the Saturday prior to the first Monday in November through the last day in February 14, both dates inclusive.

VA.R. Doc. No. R07-806; Filed October 25, 2007, 3:39 p.m.

### Final Regulation

**Title of Regulation:** **4VAC15-270. Game: Firearms (amending 4VAC15-270-40).**

**Statutory Authority:** §§29.1-103, 29.1-501 and 29.1-502 of the Code of Virginia.

**Effective Date:** July 1, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 W. Broad St., Richmond, VA 23230, telephone 804-367-8341 or email phil.smith@dgif.virginia.gov.

#### Summary:

*The amendment is to (i) allow licensed trappers to shoot a .22 caliber rimfire firearm on or over public waters for the purpose of dispatching trapped animals, and (ii) authorize department personnel to carry and shoot rifles and pistols*

*while conducting wildlife management activities on public waters.*

#### **4VAC15-270-40. Shooting or carrying rifle or pistol over public inland waters.**

It shall be unlawful to shoot a rifle or pistol at wild birds or animals on or over the public inland waters of this Commonwealth; provided, however that licensed trappers may shoot a .22 caliber rimfire rifle or pistol on or over public inland waters for the purpose of dispatching a trapped animal. It shall be unlawful to carry a loaded rifle or pistol on a boat or other floating device on the public inland waters for the purpose of hunting wild birds and wild animals; provided, however, that unloaded rifles or pistols may be transported by boat from one point to another. Nothing in this regulation applies to department personnel conducting wildlife management activities on the public waters of the Commonwealth.

VA.R. Doc. No. R07-810; Filed October 25, 2007, 3:43 p.m.

### Final Regulation

**Title of Regulation:** **4VAC15-270. Game: Firearms (adding 4VAC15-270-80).**

**Statutory Authority:** §§29.1-103, 29.1-501, and 29.1-502 the Code of Virginia.

**Effective Date:** October 26, 2007.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

#### Summary:

*The amendment (i) allows the use of shotguns without a restriction on the number of shells in the magazine and chamber combined for the hunting of nonmigratory game, and (ii) authorizes the director to remove the three shell limitation in shotguns when hunting migratory game birds if allowed by federal regulation.*

#### **4VAC15-270-80. Shotgun shell capacity for nonmigratory game and migratory game birds.**

A. It shall be lawful to hunt nonmigratory game with unplugged shotguns.

B. It shall be unlawful to hunt migratory game birds with a shotgun capable of holding more than three shells in the magazine and chamber combined, unless otherwise authorized by the director and consistent with applicable federal regulations.

VA.R. Doc. No. R07-810; Filed October 25, 2007, 3:42 p.m.

**Final Regulation**

**Title of Regulation:** **4VAC15-270. Game: Firearms (adding 4VAC15-270-90).**

**Statutory Authority:** §§29.1-103, 29.1-501, 29.1-502, and 29.1-528 of the Code of Virginia.

**Effective Date:** January 1, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 W. Broad St., Richmond, VA 23230, telephone 804-367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The amendment fulfills the requirement of Chapter 642 of the 2007 Acts of Assembly and §29.1-528 A of the Code of Virginia by promulgating model local government ordinances for hunting with firearms. The model ordinances address such matters as the caliber of the firearm, the type of firearm, and the type of ammunition used when hunting within a locality; individual Virginia county or city governments subsequently would have the option of adopting or not adopting one or more such model local government ordinances. The amendment would not enact the model local government ordinances either statewide or within specific localities; rather, the applicability of one or more model ordinance in any Virginia locality would be dependent on the respective individual county or city governments subsequently adopting such model ordinance or ordinances.*

**4VAC15-270-90. Model ordinances related to hunting with firearms for counties and cities.**

Per the provisions of §29.1-528 A of the Code of Virginia, the following model ordinances related to hunting with firearms may be adopted by counties and cities. In accordance with §29.1-528 B of the Code of Virginia, no such ordinance shall be enforceable unless the governing body of the locality notifies the director by registered mail prior to May 1 of the year in which the ordinance is to take effect.

**Model Ordinance 1:**

It shall be unlawful to hunt with a rifle larger than .22 caliber rim fire.

Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

**Model Ordinance 2:**

It shall be unlawful to hunt with a rifle larger than .22 caliber rim fire, except rifles of a larger caliber may be used for hunting groundhogs between March 1 – August 31. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

**Model Ordinance 3:**

It shall be unlawful to hunt with a rifle larger than .22 caliber rim fire, except rifles of a larger caliber may be used to hunt from a stand elevated at least 10 feet from the ground. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

**Model Ordinance 4:**

Muzzleloading rifles may only be used to hunt from a stand elevated at least 10 feet from the ground. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

**Model Ordinance 5:**

Muzzleloading rifles firing a single projectile may not be used to hunt between April 1 - May 31. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

**Model Ordinance 6:**

It shall be unlawful to hunt with shotguns loaded with slugs. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

**Model Ordinance 7:**

It shall be unlawful to engage in hunting with a firearm within the right-of-way of any primary or secondary highway. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

**Model Ordinance 8:**

It shall be unlawful to engage in hunting with a firearm within 100 yards of any primary or secondary highway. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

VA.R. Doc. No. R08-923; Filed October 25, 2007, 3:41 p.m.



**TITLE 9. ENVIRONMENT**

**STATE AIR POLLUTION CONTROL BOARD**

**Final Regulation**

**REGISTRAR'S NOTICE:** In 22:22 VA.R. 3074-3080 July 10, 2006, the board published for public comment a proposal to amend its regulations concerning emissions trading. In response to that request, comments were submitted that resulted in several changes being made to the original proposal. Additional changes were made to the original proposal based on legislation enacted by the 2006 General Assembly.

On December 6, 2006, the board adopted final amendments to its regulations concerning emission trading, which were to

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become effective on April 18, 2007. The final regulation amendments as adopted were published in the Virginia Register in 23:14 VA.R. 2291-2292, 2331-2333, and 2370-2371 March 19, 2007. Pursuant to §2.2-4007 K (currently §2.2-4007.06) of the Code of Virginia, at least 25 persons requested an opportunity to submit oral and written comments on specific changes to the proposal. Because of the substantive nature of these additional changes and the requests from petitioners, the board reopened the nonattainment area requirements of the proposal for public comment on those changes to the final regulation and suspended the effective date of nonattainment area requirements (9VAC5-140-1061, 9VAC5-140-1062, 9VAC5-140-2061, 9VAC5-140-2062, 9VAC5-140-3061, and 9VAC5-140-3062) of the regulation.

On October 10, 2007, the Virginia State Air Pollution Control Board reconsidered its original December 6, 2006, decision on the CAIR nonattainment area requirements. In its reconsideration decision, the board retained the nonattainment area requirements; but in doing so, made changes to (i) the NO<sub>x</sub> Annual and Seasonal Trading Program nonattainment area provisions to exempt new units until the latter of 2014 or until such time as the unit establishes a five-year operational period and (ii) the SO<sub>2</sub> Annual Trading Program to exempt units not eligible for allowances under the Acid Rain Program.

**Title of Regulation:** 9VAC5-140. Regulation for Emissions Trading Programs (adding 9VAC5-140-1061, 9VAC5-140-1062, 9VAC5-140-2061, 9VAC5-140-2062, 9VAC5-140-3061, 9VAC5-140-3062).

**Statutory Authority:** §§10.1-1308 and 10.1-1328 of the Code of Virginia; 42 USC §§7408, 7409, 7410 and 7602; 40 CFR Part 51.

**Effective Date:** December 26, 2007.

**Agency Contact:** Mary E. Major, Department of Environmental Quality, P.O. Box 1105, 629 East Main Street, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email memajor@deq.virginia.gov.

**Summary:**

*This regulatory action encompasses the addition of nonattainment area requirements to three parts of 9VAC5-140, each of which is addressed below:*

**NO<sub>x</sub> Annual Trading Program (Part II)**

*This part establishes a NO<sub>x</sub> Annual Trading Program that addresses the following substantive provisions: permitting, allowance methodology, monitoring, banking, compliance supplement pool, compliance determination, and opt-in provisions for sources not covered by the regulation. Virginia's NO<sub>x</sub> annual budgets are 36,074 tons in 2009 through 2014 and 30,062 tons in 2015 and thereafter.*

*Beginning January 1, 2009, electric generating units with a nameplate capacity greater than 25 MWe will be subject to the provisions of this part. To accommodate the NO<sub>x</sub> emissions from the affected units, the units are allocated from the budget a specific limited number of allowances (measured in tons per year) during the months of January 1 through December 31, otherwise known as the control period. The NO<sub>x</sub> allocations are determined through a methodology based upon heat input for existing units and electrical output for new units. January 1, 2006 is the cutoff for determining whether a unit is new or existing. If a unit does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the allocated allowances, additional allowances may be purchased or the source may use banked allowances to offset the amount of NO<sub>x</sub> generated above the allocated allowances. Smaller sources within the affected source categories are allowed to opt-in to the program.*

*Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of 3:1, i.e., for every ton over its allocations, three tons will be forfeited from the next year's allocation.*

*Emissions will need to be monitored according to 40 CFR Part 75 for all sources subject to the regulation and for any sources wishing to opt-in to the program.*

*As proposed, the provisions related to compliance in nonattainment areas prohibited the use of allowances other than those allocated to the unit or source by the board to comply. Since publication of the proposal, the provisions related to compliance in nonattainment areas have been revised to establish an independent annual emissions cap equivalent to the number of allowances issued to the affected unit. Provisions have been added to (i) provide temporary exemptions for new units and (ii) to allow compliance to be demonstrated in the aggregate for all units in a single source under common ownership.*

**NO<sub>x</sub> Ozone Season Trading Program (Part III)**

*This part establishes a NO<sub>x</sub> Ozone Season Trading Program that addresses the following substantive provisions: permitting, allowance methodology, monitoring, banking, compliance determination, and opt-in provisions for sources not covered by the regulation. Virginia's NO<sub>x</sub> ozone season budgets for electric generating units are 15,994 tons in 2009 through 2014 and 13,328 tons in 2015 and thereafter.*

*Beginning May 1, 2009, electric generating units with a nameplate capacity greater than 25 MWe will be subject to the provisions of this part. To accommodate the NO<sub>x</sub> emissions from the affected units, the units are allocated from the budget a specific limited number of allowances (measured in tons per season) during the summer months*

of May 1 through September 30, otherwise known as the control period. The NO<sub>x</sub> allocations are determined through a methodology based upon heat input for existing units and electrical output for new units. January 1, 2006 is the cutoff for determining whether a unit is new or existing. If a unit does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the allocated allowances, additional allowances may be purchased or the source may use banked allowances to offset the amount of NO<sub>x</sub> generated above the allocated allowances. Smaller sources within the affected source categories are allowed to opt-in to the program.

Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of 3:1, i.e., for every ton over its allocations, three tons will be forfeited from the next year's allocation.

Emissions will need to be monitored according to 40 CFR Part 75 for all sources subject to the regulation and for any sources wishing to opt-in to the program.

As proposed, the provisions related to compliance in nonattainment areas prohibited the use of allowances other than those allocated to the unit or source by the board to comply. Since publication of the proposal, the provisions related to compliance in nonattainment areas have been revised to establish an independent annual emissions cap equivalent to the number of allowances issued to the affected unit. Provisions have been added to (i) provide temporary exemptions for new units and (ii) to allow compliance to be demonstrated in the aggregate for all units in a single source under common ownership.

#### **SO<sub>2</sub> Annual Trading Program (Part IV)**

This part establishes a SO<sub>2</sub> Annual Trading Program that addresses the following substantive provisions: permitting, monitoring, banking, compliance determination, and opt-in provisions for sources not covered by the regulation. Virginia's SO<sub>2</sub> annual budgets are 63,478 tons in 2010 through 2014 and 44,435 tons in 2015 and thereafter.

Beginning January 1, 2010, electric generating units with a nameplate capacity greater than 25 MWe will be subject to the provisions of this part. To accommodate the SO<sub>2</sub> emissions from the affected units, the units have been allocated from the budget a specific limited number of allowances (measured in tons per year) during the months of January 1 through December 31, otherwise known as the control period. The SO<sub>2</sub> allocations are carried over from the Acid Rain Program and are valid indefinitely, except the value of the allowances is reduced over time. If a unit does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the allocated allowances, additional allowances may be purchased or the source may use

banked allowances to offset the amount of SO<sub>2</sub> generated above the allocated allowances. Smaller sources within the affected source categories are allowed to opt-in to the program.

Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of 3:1, i.e., for every ton over its allocations, three tons will be forfeited from the next year's allocation.

Emissions will need to be monitored according to 40 CFR Part 75 for all sources subject to the regulation and for any sources wishing to opt-in to the program.

As proposed, there were no provisions related to compliance in nonattainment areas in this part. Since publication of the proposal, provisions have been added to address compliance in nonattainment areas similar to those for the NO<sub>x</sub> trading programs. Provisions have been added to (i) provide a permanent exemption for units not eligible for allowances under the Acid Rain Program and (ii) to allow compliance to be demonstrated in the aggregate for all units in a single source under common ownership.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

#### **9VAC5-140-1061. Nonattainment area requirements.**

H. A. The following requirements apply to any CAIR NO<sub>x</sub> unit or CAIR NO<sub>x</sub> source located in a nonattainment area designated in 9VAC5-20-204:

1. No owner, operator or other person shall cause or permit to be discharged into the atmosphere from any CAIR NO<sub>x</sub> unit or CAIR NO<sub>x</sub> source any NO<sub>x</sub> emissions in excess of the NO<sub>x</sub> annual emissions cap. For each control period, the NO<sub>x</sub> annual emissions cap shall be equal to the number of NO<sub>x</sub> allowances (expressed in tons) allocated for the CAIR NO<sub>x</sub> unit or CAIR NO<sub>x</sub> source for the control period in accordance with 9VAC5-140-1420.

2. A CAIR NO<sub>x</sub> unit or CAIR NO<sub>x</sub> source shall be subject to the requirements under subdivision 1 of this subsection for the control period starting on the later of January 1, 2009, or the deadline for meeting the unit's monitor certification requirements under 9VAC5-140-1700 B C 1, 2, or 5 and for each control period thereafter.

3. No NO<sub>x</sub> allowances other than those issued to a CAIR NO<sub>x</sub> unit or CAIR NO<sub>x</sub> source in accordance with 9VAC5-140-1420 may be used to demonstrate compliance with the emission standard in subdivision 1 of this subsection. Compliance with the NO<sub>x</sub> annual emissions cap in subdivision 1 of this subsection shall be demonstrated annually, based on a comparison of (i) the

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~~total NO<sub>x</sub> emissions (expressed in tons) from each CAIR NO<sub>x</sub> unit during the preceding control period, as determined in accordance with Article 8 (9VAC5-140-1700 et seq.) of this part and (ii) the number of NO<sub>x</sub> allowances (expressed in tons) allocated for the CAIR NO<sub>x</sub> unit for the preceding control period in accordance with 9VAC5-140-1420. However, this subsection does not otherwise prohibit any CAIR NO<sub>x</sub> unit or CAIR NO<sub>x</sub> source from participating in the CAIR NO<sub>x</sub> Annual Trading Program NO<sub>x</sub> annual emissions cap.~~

~~4. If the board determines that the provisions of this subsection may be waived for a CAIR NO<sub>x</sub> unit or CAIR NO<sub>x</sub> source without the CAIR NO<sub>x</sub> unit or CAIR NO<sub>x</sub> source causing or contributing to a violation of any air quality standard or a nonattainment condition, the board may issue a state operating permit granting relief from the requirements of this subsection. The board may include in any permit issued to implement this subdivision any terms and conditions the board determines are necessary to ensure that the CAIR NO<sub>x</sub> unit or CAIR NO<sub>x</sub> source will not cause or contribute to a violation of any air quality standard or a nonattainment condition. The owner or operator of a CAIR NO<sub>x</sub> unit subject to this section shall be in violation of this subsection if the owner or operator fails to submit by April 1 of each year for the preceding control period (i) documentation to verify compliance with the NO<sub>x</sub> annual emissions cap set forth in subdivision 1 of this subsection or (ii) a NO<sub>x</sub> emissions compliance demonstration in accordance with 9VAC5-140-1062.~~

~~F. B. Nothing in this article part shall prevent the board permitting authority from issuing a nonattainment area permit under the authority and procedures of the state operating permit program in order to:~~

- ~~1. Cap the emissions of a CAIR NO<sub>x</sub> unit or CAIR NO<sub>x</sub> source contributing to a violation of any air quality standard or a nonattainment condition;~~
- ~~2. Remedy a situation that may cause or contribute to nonattainment condition or the endangerment of human health or welfare; or~~
- ~~3. Establish a source-specific emission standard or other requirements necessary to implement the federal Clean Air Act or the Virginia Air Pollution Control Law.~~

~~F. C. Nothing in this article part shall prevent the board permitting authority from including in any nonattainment area permit issued to implement subsection F subdivision B 1 of this section any terms and conditions that would prohibit any CAIR NO<sub>x</sub> unit or CAIR NO<sub>x</sub> source subject to this article part from engaging in any emissions trading activities or using any emissions credits obtained from emissions reductions external to the CAIR NO<sub>x</sub> unit or CAIR NO<sub>x</sub> source to comply with the requirements of this article, subsection A of this section or any nonattainment area permit~~

~~issued pursuant to subdivision B 1 of this section except that such terms and conditions may not prohibit any CAIR NO<sub>x</sub> unit or CAIR NO<sub>x</sub> source subject to this part from engaging in any emissions trading activities unrelated to compliance with the requirements of subsection A of this section or any nonattainment area permit issued pursuant to subdivision B 1 of this section.~~

~~D. Nothing in this section shall be construed to prohibit any CAIR NO<sub>x</sub> unit or CAIR NO<sub>x</sub> source from participating in the CAIR NO<sub>x</sub> Annual Trading Program. Notwithstanding any other provision of this section or any regulation of the board, the permitting authority may not include in any permit any terms and conditions that restrict any emissions trading activities under the CAIR NO<sub>x</sub> Annual Trading Program. Compliance with the CAIR NO<sub>x</sub> Annual Trading Program and this section (including any nonattainment area permits issued pursuant to this section) shall be determined separately and in accordance with the terms of the provisions of each.~~

~~E. The provisions of subsection A of this section shall not apply once an area is no longer listed in 9VAC5-20-204 as nonattainment for any pollutant; however, regardless of the attainment status of the area, any nonattainment area permits issued to implement this section shall remain in effect until revoked by the permitting authority.~~

~~[ F. The provisions of subsection A of this section shall not apply to any CAIR NO<sub>x</sub> unit commencing operation on or after January 1, 2006, until the later of (i) January 1, 2014, or (ii) the unit has operated each calendar year during a period of at least five consecutive calendar years. ]~~

## **9VAC5-140-1062. NO<sub>x</sub> emissions compliance demonstration.**

~~A. Compliance with the NO<sub>x</sub> annual emissions cap set forth in 9VAC5-140-1061 A 1 may also be achieved through a NO<sub>x</sub> emissions compliance demonstration meeting the requirements of this section.~~

~~B. The NO<sub>x</sub> emissions compliance demonstration submitted pursuant to this section may include one or more CAIR NO<sub>x</sub> units in a CAIR NO<sub>x</sub> source under common control and located in the nonattainment area.~~

~~C. NO<sub>x</sub> emissions compliance demonstrations shall be submitted to the permitting authority by April 1 of each year for the preceding control period.~~

~~D. A complete NO<sub>x</sub> emissions compliance demonstration shall include the following elements in a format acceptable to the permitting authority:~~

- ~~1. Identification of each CAIR NO<sub>x</sub> unit in the NO<sub>x</sub> emissions compliance demonstration.~~
- ~~2. The number of NO<sub>x</sub> allowances (expressed in tons) allocated for each CAIR NO<sub>x</sub> unit for the preceding control period.~~

3. The total NO<sub>x</sub> emissions (expressed in tons) from each CAIR NO<sub>x</sub> unit during the preceding control period.

4. The calculation for the equation in subsection E of this section.

E. Compliance with this section shall be demonstrated with the following equation:

$$\sum_{i=1}^n (ANOE_i) \leq \sum_{i=1}^n (X_i)$$

where:

n is the number of CAIR NO<sub>x</sub> units in the NO<sub>x</sub> emissions compliance demonstration (n may equal 1).

Σ is the sum of all i CAIR NO<sub>x</sub> units.

i is a CAIR NO<sub>x</sub> unit identified in subsection B of this section.

ANOE (Actual Nitrogen Oxides Emissions) are the total NO<sub>x</sub> emissions (expressed in tons) from each CAIR NO<sub>x</sub> unit during the preceding control period, as determined in accordance with Article 8 (9VAC5-140-1700 et seq.) of this part.

X is the number of NO<sub>x</sub> allowances (expressed in tons) allocated for the CAIR NO<sub>x</sub> unit for the preceding control period in accordance with 9VAC5-140-1420.

F. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-1700 et seq.) of this part shall be used to determine compliance by each CAIR NO<sub>x</sub> source with the NO<sub>x</sub> annual emissions cap set forth in 9VAC5-140-1061 A.

**9VAC5-140-2061. Nonattainment area requirements.**

~~H. A.~~ The following requirements apply to any CAIR NO<sub>x</sub> Ozone Season unit or CAIR NO<sub>x</sub> Ozone Season source located in a nonattainment area designated in 9VAC5-20-204:

1. No owner, operator or other person shall cause or permit to be discharged into the atmosphere from any CAIR NO<sub>x</sub> Ozone Season unit or CAIR NO<sub>x</sub> Ozone Season source any NO<sub>x</sub> emissions in excess of the NO<sub>x</sub> Ozone Season emissions cap. For each control period, the NO<sub>x</sub> Ozone Season emissions cap shall be equal to the number of NO<sub>x</sub> allowances (expressed in tons) allocated for the CAIR NO<sub>x</sub> Ozone Season unit or CAIR NO<sub>x</sub> Ozone Season source for the control period in accordance with 9VAC5-140-2420.

2. A CAIR NO<sub>x</sub> Ozone Season unit or CAIR NO<sub>x</sub> Ozone Season source shall be subject to the requirements under subdivision 1 of this subsection for the control period starting on the later of ~~January~~ May 1, 2009, or the deadline for meeting the unit's monitor certification requirements under 9VAC5-140-2700 C 1, 2, 3 or § 7 and for each control period thereafter.

~~3. No NO<sub>x</sub> allowances other than those issued to a CAIR NO<sub>x</sub> Ozone Season unit or CAIR NO<sub>x</sub> Ozone Season source in accordance with 9VAC5 140 2420 may be used to demonstrate compliance with the emission standard in subdivision 1 of this subsection. Compliance with the NO<sub>x</sub> Ozone Season emissions cap in subdivision 1 of this subsection shall be demonstrated annually, based on a comparison of (i) the total NO<sub>x</sub> emissions (expressed in tons) from each CAIR NO<sub>x</sub> Ozone Season unit during the preceding control period, as determined in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part and (ii) the number of NO<sub>x</sub> allowances (expressed in tons) allocated for the CAIR NO<sub>x</sub> Ozone Season unit for the preceding control period in accordance with 9VAC5 140 2420 NO<sub>x</sub> Ozone Season emissions cap. However, this subsection does not otherwise prohibit any CAIR NO<sub>x</sub> Ozone Season unit or CAIR NO<sub>x</sub> Ozone Season source from participating in the CAIR NO<sub>x</sub> Ozone Season Trading Program.~~

~~4. If the board determines that the provisions of this subsection may be waived for a CAIR NO<sub>x</sub> Ozone Season unit or CAIR NO<sub>x</sub> Ozone Season source without the CAIR NO<sub>x</sub> Ozone Season unit or CAIR NO<sub>x</sub> Ozone Season source causing or contributing to a violation of any air quality standard or a nonattainment condition, the board may issue a state operating permit granting relief from the requirements of this subsection. The board may include in any permit issued to implement this subdivision any terms and conditions the board determines are necessary to ensure that the CAIR NO<sub>x</sub> Ozone Season unit or CAIR NO<sub>x</sub> Ozone Season source will not cause or contribute to a violation of any air quality standard or a nonattainment condition. The owner or operator of a CAIR NO<sub>x</sub> Ozone Season unit subject to this section shall be in violation of this subsection if the owner or operator fails to submit by January 1 of each year for the preceding control period (i) documentation to verify compliance with the NO<sub>x</sub> Ozone Season emissions cap set forth in subdivision 1 of this subsection or (ii) a NO<sub>x</sub> emissions compliance demonstration in accordance with 9VAC5-140-2062.~~

~~F. B.~~ Nothing in this article part shall prevent the board permitting authority from issuing a nonattainment area permit under the authority and procedures of the state operating permit program in order to:

1. Cap the emissions of a CAIR NO<sub>x</sub> Ozone Season unit or CAIR NO<sub>x</sub> Ozone Season source contributing to a violation of any air quality standard or a nonattainment condition;
2. Remedy a situation that may cause or contribute to nonattainment condition or the endangerment of human health or welfare; or

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3. Establish a source-specific emission standard or other requirements necessary to implement the federal Clean Air Act or the Virginia Air Pollution Control Law.

~~J. C. Nothing in this article part shall prevent the board permitting authority from including in any nonattainment area permit issued to implement subsection I subdivision B 1 of this section any terms and conditions that would prohibit any CAIR NO<sub>x</sub> Ozone Season unit or CAIR NO<sub>x</sub> Ozone Season source subject to this article part from engaging in any emissions trading activities or using any emissions credits obtained from emissions reductions external to the CAIR NO<sub>x</sub> Ozone Season unit or CAIR NO<sub>x</sub> Ozone Season source to comply with the requirements of this article. Ozone Season Trading Program. subsection A of this section or any nonattainment area permit issued pursuant to subdivision B 1 of this section except that such terms and conditions may not prohibit any CAIR NO<sub>x</sub> Ozone Season unit or CAIR NO<sub>x</sub> Ozone Season source subject to this part from engaging in any emissions trading activities unrelated to compliance with the requirements of subsection A of this section or any nonattainment area permit issued pursuant to subdivision B 1 of this section.~~

D. Nothing in this section shall be construed to prohibit any CAIR NO<sub>x</sub> Ozone Season unit or CAIR NO<sub>x</sub> Ozone Season source from participating in the CAIR NO<sub>x</sub> Ozone Season Trading Program. Notwithstanding any other provision of this section or any regulation of the board, the permitting authority may not include in any permit any terms and conditions that restrict any emissions trading activities under the CAIR NO<sub>x</sub> Ozone Season Trading Program. Compliance with the CAIR NO<sub>x</sub> Ozone Season Trading Program and this section (including any nonattainment area permits issued pursuant to this section) shall be determined separately and in accordance with the terms of the provisions of each.

E. The provisions of subsection A of this section shall not apply once an area is no longer listed in 9VAC5-20-204 as nonattainment for any pollutant; however, regardless of the attainment status of the area, any nonattainment area permits issued to implement this section shall remain in effect until revoked by the permitting authority.

[ F. The provisions of subsection A of this section shall not apply to any CAIR NO<sub>x</sub> Ozone Season unit commencing operation on or after January 1, 2006, until the later of (i) January 1, 2014, or (ii) the unit has operated each calendar year during a period of at least five consecutive calendar years. ]

## **9VAC5-140-2062. NO<sub>x</sub> emissions compliance demonstration.**

A. Compliance with the NO<sub>x</sub> Ozone Season emissions cap set forth in 9VAC5-140-2061 A 1 may also be achieved through a NO<sub>x</sub> emissions compliance demonstration meeting the requirements of this section.

B. The NO<sub>x</sub> emissions compliance demonstration submitted pursuant to this section may include one or more CAIR NO<sub>x</sub> Ozone Season units in a CAIR NO<sub>x</sub> Ozone Season source under common control and located in the nonattainment area.

C. NO<sub>x</sub> emissions compliance demonstrations shall be submitted to the permitting authority by January 1 of each year for the preceding control period.

D. A complete NO<sub>x</sub> emissions compliance demonstration shall include the following elements in a format acceptable to the permitting authority:

1. Identification of each CAIR NO<sub>x</sub> Ozone Season unit in the NO<sub>x</sub> emissions compliance demonstration.

2. The number of NO<sub>x</sub> allowances (expressed in tons) allocated for each CAIR NO<sub>x</sub> Ozone Season unit for the preceding control period.

3. The total NO<sub>x</sub> emissions (expressed in tons) from each CAIR NO<sub>x</sub> Ozone Season unit during the preceding control period.

4. The calculation for the equation in subsection E of this section.

E. Compliance with this section shall be demonstrated with the following equation:

$$\sum_{i=1}^n (ANOE_i) \leq \sum_{i=1}^n (X)$$

where:

n is the number of CAIR NO<sub>x</sub> Ozone Season units in the NO<sub>x</sub> emissions compliance demonstration (n may equal 1).

Σ is the sum of all i CAIR NO<sub>x</sub> Ozone Season units.

i is a CAIR NO<sub>x</sub> Ozone Season unit identified in subsection B of this section.

ANOE (Actual Nitrogen Oxides Emissions) are the total NO<sub>x</sub> emissions (expressed in tons) from each CAIR NO<sub>x</sub> Ozone Season unit during the preceding control period, as determined in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part.

X is the number of NO<sub>x</sub> allowances (expressed in tons) allocated for the CAIR NO<sub>x</sub> Ozone Season unit for the preceding control period in accordance with 9VAC5-140-2420.

F. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-2700 et seq.) of this part shall be used to determine compliance by each CAIR NO<sub>x</sub> Ozone Season source with the NO<sub>x</sub> Ozone Season emissions cap set forth in 9VAC5-140-2061 A.

**9VAC5-140-3061. Nonattainment area requirements .**

A. The following requirements apply to any CAIR SO<sub>2</sub> unit located in a nonattainment area designated in 9VAC5-20-204:

1. No owner, operator or other person shall cause or permit to be discharged into the atmosphere from any CAIR SO<sub>2</sub> unit any SO<sub>2</sub> emissions in excess of the SO<sub>2</sub> annual emissions cap. For each control period, the SO<sub>2</sub> annual emissions cap shall be equal to the number of SO<sub>2</sub> allowances (expressed in tons) allocated for the CAIR SO<sub>2</sub> unit for the control period in accordance with 9VAC5-140-3420.

2. A CAIR SO<sub>2</sub> unit shall be subject to the requirements under subdivision 1 of this subsection for the control period starting on the later of January 1, [ ~~2009~~ 2010 ], or the deadline for meeting the unit's monitor certification requirements under 9VAC5-140-3700 C 1, 2, or 5 and for each control period thereafter.

3. Compliance with the SO<sub>2</sub> annual emissions cap in subdivision 1 of this subsection shall be based on a comparison of (i) the total SO<sub>2</sub> emissions (expressed in tons) from each CAIR SO<sub>2</sub> unit during the control period, as determined in accordance with Article 8 (9VAC5-140-3700 et seq.) of this part, and (ii) the SO<sub>2</sub> annual emissions cap.

4. The owner or operator of a CAIR SO<sub>2</sub> unit subject to this section shall be in violation of this subsection if the owner or operator fails to submit by April 1 of each year for the preceding control period (i) documentation to verify compliance with the SO<sub>2</sub> annual emissions cap set forth in subdivision 1 of this subsection or (ii) an SO<sub>2</sub> emissions compliance demonstration in accordance with 9VAC5-140-3062.

B. Nothing in this part shall prevent the permitting authority from issuing a nonattainment area permit under the authority and procedures of the state operating permit program in order to:

1. Cap the emissions of a CAIR SO<sub>2</sub> unit or CAIR SO<sub>2</sub> source contributing to a violation of any air quality standard or a nonattainment condition;

2. Remedy a situation that may cause or contribute to nonattainment condition or the endangerment of human health or welfare; or

3. Establish a source-specific emission standard or other requirements necessary to implement the federal Clean Air Act or the Virginia Air Pollution Control Law.

C. Nothing in this part shall prevent the permitting authority from including in any nonattainment area permit issued to implement subdivision B 1 of this section any terms and conditions that would prohibit any CAIR SO<sub>2</sub> unit or CAIR SO<sub>2</sub> source subject to this part from engaging in any

emissions trading activities or using any emissions credits obtained from emissions reductions external to the CAIR SO<sub>2</sub> unit or CAIR SO<sub>2</sub> source to comply with the requirements of subsection A of this section or any nonattainment area permit issued pursuant to subdivision B 1 of this section except that such terms and conditions may not prohibit any CAIR SO<sub>2</sub> unit or CAIR SO<sub>2</sub> source subject to this part from engaging in any emissions trading activities unrelated to compliance with the requirements of subsection A of this section or any nonattainment area permit issued pursuant to subdivision B 1 of this section.

D. Nothing in this section shall be construed to prohibit any CAIR SO<sub>2</sub> unit or CAIR SO<sub>2</sub> source from participating in the CAIR SO<sub>2</sub> Annual Trading Program. Notwithstanding any other provision of this section or any regulation of the board, the permitting authority may not include in any permit any terms and conditions that restrict any emissions trading activities under the CAIR SO<sub>2</sub> Annual Trading Program. Compliance with the CAIR SO<sub>2</sub> Annual Trading Program and this section (including any nonattainment area permits issued pursuant to this section) shall be determined separately and in accordance with the terms of the provisions of each.

E. The provisions of subsection A of this section shall not apply once an area is no longer listed in 9VAC5-20-204 as nonattainment for any pollutant; however, regardless of the attainment status of the area, any nonattainment area permits issued to implement this section shall remain in effect until revoked by the permitting authority.

[ F. The provisions of subsection A of this section shall not apply to any CAIR SO<sub>2</sub> unit for which no SO<sub>2</sub> allowances are allocated in accordance with 9VAC5-140-3420. ]

**9VAC5-140-3062. SO<sub>2</sub> emissions compliance demonstration.**

A. Compliance with the SO<sub>2</sub> annual emissions cap set forth in 9VAC5-140-3061 A 1 may also be achieved through an SO<sub>2</sub> emissions compliance demonstration meeting the requirements of this section.

B. The SO<sub>2</sub> emissions compliance demonstration submitted pursuant to this section may include one or more CAIR SO<sub>2</sub> units in a CAIR SO<sub>2</sub> source under common control and located in the nonattainment area.

C. SO<sub>2</sub> emissions compliance demonstrations shall be submitted to the permitting authority by April 1 of each year for the preceding control period.

D. A complete SO<sub>2</sub> emissions compliance demonstration shall include the following elements in a format acceptable to the permitting authority:

1. Identification of each CAIR SO<sub>2</sub> unit in the SO<sub>2</sub> emissions compliance demonstration.

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2. The number of SO<sub>2</sub> allowances (expressed in tons) allocated for each CAIR SO<sub>2</sub> unit for the preceding control period.

3. The total SO<sub>2</sub> emissions (expressed in tons) from each CAIR SO<sub>2</sub> unit during the preceding control period.

4. The calculation for the equation in subsection E of this section.

E. Compliance with this section shall be demonstrated with the following equation:

$$\sum_{i=1}^n (ASDE_i) \leq \sum_{i=1}^n (X)$$

where:

n is the number of CAIR SO<sub>2</sub> units in the SO<sub>2</sub> emissions compliance demonstration (n may equal 1).

Σ is the sum of all i CAIR SO<sub>2</sub> units.

i is a CAIR SO<sub>2</sub> unit identified in subsection B of this section.

ASDE (Actual Sulfur Dioxide Emissions) are the total SO<sub>2</sub> emissions (expressed in tons) from each CAIR SO<sub>2</sub> unit during the preceding control period, as determined in accordance with Article 8 (9VAC5-140-3700 et seq.) of this part.

X is the number of SO<sub>2</sub> allowances (expressed in tons) allocated for the CAIR SO<sub>2</sub> unit for the preceding control period in accordance with 9VAC5-140-3420.

F. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-3700 et seq.) of this part shall be used to determine compliance by each CAIR SO<sub>2</sub> source with the SO<sub>2</sub> annual emissions cap set forth in 9VAC5-140-3061 A.

VA.R. Doc. No. R05-230; Filed November 7, 2007, 9:50 a.m.

## STATE WATER CONTROL BOARD

### Proposed Regulation

**REGISTRAR'S NOTICE:** The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with §2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§62.1-44.2 et seq.), Chapter 24 (§62.1-242 et seq.) of Title 62.1 and Chapter 25 (§62.1-254 et seq.) of Title 62.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of §2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to

assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in §2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

**Title of Regulation:** **9VAC25-193. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities (amending 9VAC25-193-40, 9VAC25-193-70).**

**Statutory Authority:** §62.1-44.15 of the Code of Virginia; §402 of the Clean Water Act; 40 CFR Parts 122, 123 and 124.

**Public Hearing Information:**

January 7, 2008 - 4 p.m. - Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA

**Public comments:** Public comments may be submitted until 5 p.m. on January 25, 2008.

**Public Participation:** In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the board is seeking information on impacts on small businesses as defined in §2.2-4007.1 of the Code of Virginia. Information may include (i) projected reporting, recordkeeping and other administrative costs, (ii) probable effect of the regulation on affected small businesses; and (iii) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to Elleanore Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, (804) 698-4111, FAX (804) 698-4032 or emdaub@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall website at www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5 p.m. on January 25, 2008.

A public hearing will be held and notice of the public hearing can be found on the Virginia Regulatory Town Hall website and in the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Agency Contact:** Elleanore M. Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4032, or email emdaub@deq.virginia.gov.

**Summary:**

*The proposed amendments reissue the general permit that expires on September 30, 2008. The general permit establishes limitations and monitoring requirements for*

wastewater discharges from concrete products facilities. As with an individual VPDES permit, the effluent limits in the general permit are set to protect the quality of the waters receiving the discharges.

*The general permit is amended to include new effective and expiration dates to correspond with the new dates of the reissued permit. In special condition 1 in Part I B a requirement for no solids deposition in surface water as a result of the industrial activity in the vicinity of the outfall has been added. Also, that the visual quality of the receiving stream (including observations of solids deposition from the industrial activity) in the vicinity of the outfall (including ditches and conveyances) should be included in the quarterly visual examination reports of the storm water management section (Part II D). These were added in response to staff concerns about solids depositions (concrete product) entering the receiving stream.*

*Special condition 10 in Part I B is amended such that where basins are operated in a series mode of operation, the one foot freeboard requirement for the upper basins may be waived provided the final basin will maintain the freeboard requirements. This was added to reflect existing practice and design of these basins and to ensure the lower basin will not overflow in high flow rain events.*

*Special condition 13 in Part I B was modified to reflect liner requirements for settling basins built after February 1998 set forth in §62.1-44.15:5.2 of the Code of Virginia.*

*Special condition 15 in Part I B was modified to ensure that the permittee reports discharge monitoring at two significant digits. The changes in this section were done to conform to Guidance Memo 06-2016 (Significant Figures for Discharge Monitoring Reports) for consistency within the VPDES program.*

#### **9VAC25-193-40. Effective date of the permit.**

This general VPDES permit became effective on October 1, ~~2003~~ 2008, and it will expire on September 30, ~~2008~~ 2013. ~~The general permit was amended on December 7, 2005, to add coverage for SIC Codes 3271 and 3272. The amendment became effective on February 8, 2006.~~ With respect to a particular facility, this general permit shall become effective upon the facility owner's compliance with the provisions of 9VAC25-193-50 and the receipt of a copy of the general VPDES permit.

#### **9VAC25-193-70. General permit.**

Any owner whose registration statement is accepted by the board will receive the following permit and shall comply with the requirements contained therein and be subject to all requirements of 9VAC25-31.

General Permit No: VAG11

Effective Date: October 1, ~~2003~~ 2008

Expiration Date: September 30, ~~2008~~ 2013

~~Modification Date: February 8, 2006~~

#### **GENERAL PERMIT FOR CONCRETE PRODUCTS FACILITIES AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW**

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of concrete products facilities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations, Monitoring Requirements, and Special Conditions, Part II-Storm Water Management, and Part III-Conditions Applicable to All VPDES Permits, as set forth herein.

#### **Part I**

##### **A. Effluent limitations and monitoring requirements.**

##### **1. Process wastewater.**

During the period beginning on the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge process wastewater which may contain input from vehicle/equipment maintenance activities, and may be commingled with noncontact cooling water or storm water associated with industrial activity. Samples taken in compliance with the monitoring requirements specified below shall be taken at outfall(s).

Such discharges shall be limited and monitored by the permittee as specified below:

# Regulations

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Average	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	NL	NL	NL	(6)	Estimate
Total Suspended Solids (mg/l)	30	60	NL	(6)	Grab
pH (standard units)	NA	9.0 <sup>(1)</sup>	6.0 <sup>(1)</sup>	(6)	Grab
Total Petroleum Hydrocarbons <sup>(2)</sup> (mg/l)	NA	15	NL	1/3 Months	Grab
Total Residual Chlorine <sup>(3)</sup> (mg/l)	0.016	0.016	NL	(6)	Grab
Ammonia-N <sup>(3)</sup> (mg/l)	NA	NL	NL	(6)	Grab
Temperature <sup>(4)</sup> (°C)	NA	(5)	NL	(6)	Immersion Stabilization

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

<sup>(2)</sup>Total Petroleum Hydrocarbons limitation and monitoring are only required where a discharge contains process wastewater generated from the vehicle/equipment maintenance activities. Total Petroleum Hydrocarbons shall be analyzed using the Wisconsin Department of Natural Resources Modified Diesel Range Organics Method as specified in Wisconsin publication SW-141 (1995), or by EPA SW-846 Method 8015B (1996) for diesel range organics, or by EPA SW-846 Method 8270C (1996). If Method 8270C is used, the lab must report the combination of diesel range organics and polynuclear aromatic hydrocarbons.

<sup>(3)</sup>Chlorine limitation and monitoring are only required where the discharge contains cooling water that is chlorinated. Ammonia monitoring is only required where the discharge contains cooling water that is disinfected using chloramines.

<sup>(4)</sup>Temperature limitation and monitoring are only required where a discharge contains cooling water.

<sup>(5)</sup>The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, 31°C for mountain and upper piedmont waters, 21°C for put and take trout waters, or 20°C for natural trout waters. No maximum temperature limit applies to discharges to estuarine waters.

For estuarine waters, nontidal coastal and piedmont waters, mountain and upper piedmont waters, and put and take trout waters, the effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. For natural trout waters, the temperature

of the effluent shall not cause an increase of 1°C above natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour, except in the case of natural trout waters where the hourly temperature change shall not exceed 0.5°C.

Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.

<sup>(6)</sup>For a facility that was covered by the previous general permit, and reduced monitoring was granted and compliance demonstrated, monitoring frequency shall be 1/quarter. In all other cases, monitoring frequency shall be 1/month in the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations and the permittee receives authorization from the DEQ regional office, monitoring frequency shall be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency shall revert to 1/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January.

## Part I. Effluent Limitations and Monitoring Requirements

### A. Effluent limitations and monitoring requirements.

#### 2. Noncontact cooling water.

During the period beginning on the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge noncontact cooling water. Samples taken in compliance with the monitoring requirements specified below shall be taken at outfall(s).

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Average	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	NL	NL	NA	(4)	Estimate
pH (standard units)	NA	9.0 <sup>(1)</sup>	6.0 <sup>(1)</sup>	(4)	Grab
Total Residual Chlorine <sup>(2)</sup> (mg/l)	0.016	0.016	NA	(4)	Grab
Ammonia-N <sup>(2)</sup> (mg/l)	NA	NL	NA	(4)	Grab
Temperature (°C)	NA	(3)	NA	(4)	Immersion Stabilization

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

<sup>(2)</sup>Chlorine limitation and monitoring are only required where the source of cooling water is chlorinated. Ammonia monitoring is only required where cooling water is disinfected using chloramines.

<sup>(3)</sup>The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, 31°C for mountain and upper piedmont waters, 21°C for put and take trout waters, or 20°C for natural trout waters. No maximum temperature limit applies to discharges to estuarine waters. For estuarine waters, nontidal coastal and piedmont waters, mountain and upper piedmont waters, and put and take trout waters, the effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. For natural trout waters, the temperature of the effluent shall not cause an increase of 1°C above natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour, except in the case of natural trout waters where the hourly temperature change shall not exceed 0.5°C. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.

<sup>(4)</sup>For a facility that was covered by the previous general permit, and reduced monitoring was granted and compliance

demonstrated, monitoring frequency shall be 1/quarter. In all other cases, monitoring frequency shall be 1/month in the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations and the permittee receives authorization from the DEQ regional office, monitoring frequency shall be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency shall be reverted to 1/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January.

Part I. Effluent Limitations and Monitoring Requirements

A. Effluent limitations and monitoring requirements.

3. Storm water associated with industrial activity—storm event monitoring.

During the period beginning on the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge storm water associated with industrial activity which does not combine with other process wastewaters or noncontact cooling water prior to discharge. Samples taken in compliance with the monitoring requirements specified below shall be taken at outfall(s).

Such discharges shall be limited and monitored by the permittee as specified below:

# Regulations

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	NL	NA	1/Year	Estimate <sup>(1)</sup>
Total Petroleum Hydrocarbons <sup>(3)</sup> (mg/l)	NL	NA	1/Year	Grab <sup>(2)</sup>
Total Suspended Solids (mg/l)	NL	NA	1/Year	Grab <sup>(2)</sup>
Total Recoverable Iron (mg/l)	NL	NA	1/Year	Grab <sup>(2)</sup>
pH (standard units)	NL	NA	1/Year	Grab <sup>(2)</sup>

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>Estimate of the total volume of the discharge during the storm event in accordance with the Operation and Maintenance Manual.

<sup>(2)</sup>The grab sample shall be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge, and the permittee shall submit with the Discharge Monitoring Report a description of why a grab sample during the first 30 minutes was impracticable.

<sup>(3)</sup>Total Petroleum Hydrocarbons shall be analyzed using the Wisconsin Department of Natural Resources Modified Diesel Range Organics Method as specified in Wisconsin publication SW-141 (1995), or by EPA SW-846 Method 8015B (1996) for diesel range organics, or by EPA SW-846 Method 8270C (1996). If Method 8270C is used, the lab must report the combination of diesel range organics and polynuclear aromatic hydrocarbons.

4. All storm water samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Specific storm event data shall be reported with the Discharge Monitoring Report in accordance with Part II A.

5. Reports of annual monitoring shall be submitted to the DEQ regional office no later than the 10th day of January of each year.

6. A quarterly visual monitoring shall be performed and recorded in accordance with Part II D.

## B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts. There shall be no solids deposition in surface water as a result of the industrial activity in the vicinity of the outfall.

2. Except as expressly authorized by this permit, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, byproduct or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to surface waters.

3. Vehicles and equipment utilized during the industrial activity on a site must be operated and maintained in such a manner as to minimize the potential or actual point source pollution of surface waters. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or ground waters of the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up to the maximum extent practicable and disposed of in a manner so as not to allow their entry into the surface or ground waters of the state.

4. All washdown and washout of trucks, mixers, transport buckets, forms or other equipment shall be conducted within designated washdown and washout areas. All washout/washdown water shall be collected for recycle or treated prior to discharge.

5. Any waste concrete and dredged solids from the settling basins shall be managed within a designated area, and any wastewaters including storm water generated from these activities shall be collected for recycle or treated prior to discharge.

6. No domestic sewage discharges to surface waters are permitted under this general permit.

7. For geothermal or other system which discharges noncontact cooling water, the use of any chemical additives, except chlorine, without prior approval is prohibited under this general permit. Prior approval shall be obtained from the DEQ Regional Office before any

changes are made to the chemical usage in the geothermal or other system. Requests for approval of chemical use shall be made in writing and shall include the following information:

- a. The chemical additive to be employed and its purpose;
- b. The proposed schedule and quantity of chemical usage, and the estimated concentration in the discharge;
- c. The wastewater treatment or retention (if any) to be provided during the use of the additive; and
- d. A Material Safety Data Sheet (MSDS) and available aquatic toxicity information for each additive proposed for use.

8. Within 180 days after the date of coverage under this general permit, the permittee shall develop an Operations and Maintenance (O&M) Manual for the permitted facility. The O&M Manual shall include procedures and practices for the mitigation of pollutant discharges and for the protection of state waters from the facility's operations. The manual shall address, at a minimum, operations and maintenance practices for the wastewater treatment process units and chemical and material storage areas, solids management and disposal procedures, temporary and long-term facility closure plans, testing requirements and procedures, recordkeeping and reporting requirements and the duties and roles of responsible officials.

The permittee shall implement the O&M Manual procedures and practices as soon as possible but no later than 12 months after the date of coverage under this general permit. The manual shall be kept on site at the permitted facility and shall be made available to the department upon request.

For a facility that was covered by the previous permit, an O&M Manual was required to be developed and implemented for that facility. Within 90 days after the date of coverage under this general permit, the existing O&M Manual shall be reviewed and modified, as appropriate, to conform to the requirements of this permit. The existing O&M Manual shall continue to be implemented until the manual, if required, is revised and implemented.

9. If the concrete products facility discharges through a municipal separate storm sewer system to surface waters, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system of the existence of the discharge and provide the following information: the name of the facility; a contact person and phone number; nature of the discharge; number of the outfalls; and the location of the discharge. A copy of such notification shall be provided to the department.

10. The permittee shall ensure that all basins and lagoons maintain a minimum freeboard of one foot at all times except during a 72-hour transition period after a measurable rainfall event. During the 72-hour transition period, no discharge from the basins and lagoons shall occur unless it is in accordance with this permit. Within 72 hours after a measurable rainfall event, the freeboard in all basins and lagoons shall return to the minimum freeboard of one foot. Where basins are operated in a series mode of operation, the one-foot freeboard requirement for the upper basins may be waived provided the final basin will maintain the freeboard requirements of this special condition. Should the one-foot freeboard not be maintained, the permittee shall immediately notify the DEQ Regional Office, describe the problem and corrective measures taken to correct the problem. Within five days of notification, the permittee shall submit a written statement to the regional office of explanation and corrective measures taken. In order to demonstrate compliance, the permittee shall conduct daily inspections while the facility is in operation and maintain an inspection log. The inspection log shall include at least the date and time of inspection, the weather data including the occurrence of a measurable rainfall event, the printed name and the handwritten signature of the inspector, the freeboard measurement in inches, a notation of observation made, and any corrective measures, if appropriate, taken. The log shall be kept onsite and be made available to the department upon request.

11. For treatment systems which operate only in a "no discharge" mode, there shall be no discharge of pollutants to surface waters from these systems except in the case of a storm event which is greater than a 25 year-24 hour storm event. The operation of these systems shall not contravene the Water Quality Standards (9VAC25-260), as adopted and amended by the board, or any provision of the State Water Control Law.

12. The permittee shall notify the department as soon as he knows or has reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in this permit if that discharge will exceed the highest of the following notification levels:

- (1) One hundred micrograms per liter (100 µg/l);
- (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- (3) Five times the maximum concentration value reported for that pollutant in the permit application; or

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(4) The level established by the board in accordance with 9VAC25-31-220 F.

b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in this permit if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter (500 µg/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board in accordance with 9VAC25-31-220 F.

13. All settling basins ~~used for treatment and control of process wastewater and commingled storm water that were constructed on or after February 2, 1998, shall be lined with concrete or any other impermeable materials prior to commencing operation.~~

14. Treated wastewater may be used on site for the purposes of dust suppression. Dust suppression shall be carried out as a best management practice but not a wastewater disposal method. No ponding or surface runoff shall occur as a result of such activity.

15. Compliance reporting under Part I A.

a. The quantification levels (QL) shall be as follows:

Effluent Characteristic	Quantification Level
Chlorine	0.1 0.10 mg/l
Ammonia-N	0.2 0.20 mg/l

b. Reporting.

(1) Monthly Average. Compliance with the monthly average limitations and/or reporting requirements for the parameters listed in Part I A shall be determined as follows: All concentration data below the QL listed in subsection 15 a of this subsection shall be treated as zero. All concentration data equal to or above the QL listed shall be treated as it is reported. An arithmetic average shall be calculated using all reported data, including the defined zeros, for the month. This arithmetic average shall be reported on the DMR as calculated. If all data are below the QL then the average shall be reported as "<QL". If reporting for quantity is required on the DMR and the calculated concentration is <QL then report "<QL" for the quantity, otherwise use the calculated concentration.

(2) Daily Maximum. Compliance with the daily maximum limitations and/or reporting requirements for the parameters listed in Part I A shall be determined as

follows: All concentration data below the QL listed in subdivision 15 a of this subsection shall be treated as zero. All concentration data equal to or above the QL shall be treated as reported. An arithmetic average of the values shall be calculated using all reported data, including the defined zeros, collected for each day during the reporting month. The maximum value of these daily averages thus determined shall be reported on the DMR as the Daily Maximum. If all data are below the QL then the average shall be reported as "<QL". If reporting for quantity is required on the DMR and the calculated concentration is <QL then report "<QL" for the quantity, otherwise use the calculated concentration.

(3) Any single datum required shall be reported as "<QL" if it less than QL listed in subdivision 15 a of this subsection. Otherwise the numerical value shall be reported.

(4) The permittee shall report at least two significant digits for a given parameter. Regardless of the rounding convention used (i.e. five always rounding up or to the nearest even number) by the permittee, the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

## Part II.

### Storm Water Management.

A. Recording of results. For each discharge measurement or sample taken pursuant to the storm event monitoring requirements of this permit, the permittee shall record and report with the Discharge Monitoring Reports (DMRs) the following information:

1. The date and duration (in hours) of the storm event(s) sampled;
2. The rainfall measurements or estimates (in inches) of the storm event which generated the sampled discharge; and
3. The duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

B. Representative discharge. When a facility has two or more exclusively storm water outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluent, the permittee may test the effluent of one of such outfalls and include with the DMRs an explanation that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each exclusively storm water outfall that the permittee believes is

representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided.

C. Sampling waiver. When a permittee is unable to collect storm water samples required in Part I A or other applicable sections of this permit within a specified sampling period due to adverse climatic conditions, the permittee shall collect a substitute sample from a separate qualifying event in the next period and submit these data along with the data for the routine sample in that period. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

D. Quarterly visual examination of storm water quality. The permittee shall perform and document a visual examination of a storm water discharge associated with industrial activity from each outfall, except discharges exempted below. The visual examination(s) must be made during daylight hours (e.g., normal working hours), at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December.

1. Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examination shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The examination must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previous measurable (greater than 0.1 inch rainfall) storm event. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the facility. The required 72-hour storm event interval may also be waived where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted. If no qualifying storm event resulted in discharge from the facility during a monitoring period, visual monitoring is exempted provided that the permittee document that no qualifying storm event occurred that resulted in storm water discharge during that quarter. Where practicable, the same individual should carry out

the collection and examination of discharges for the entire permit term.

2. Visual examination reports must be maintained onsite with the pollution prevention plan. The report shall include the outfall location, the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), visual quality of the receiving stream (including observations of solids deposition and oil sheen from the industrial activity) in the vicinity of the outfall (including ditches and conveyances) and probable sources of any observed storm water contamination.

3. If the facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the examination data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (i.e., low (under 40%), medium (40 to 65%), or high (above 65%)) shall be provided in the plan.

4. When the permittee is unable to conduct the visual examination due to adverse climatic conditions, the permittee must document the reason for not performing the visual examination and retain this documentation onsite with the records of the visual examinations. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

E. Allowable nonstorm water discharges.

1. The following nonstorm water discharges are authorized by this permit provided the nonstorm water component of the discharge is in compliance with Part II E 2 below.

- a. Discharges from fire fighting activities;
- b. Fire hydrant flushings;
- c. Potable water including water line flushings;

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- d. Uncontaminated air conditioning or compressor condensate;
- e. Irrigation drainage;
- f. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with manufacturer's instructions;
- g. Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);
- h. Routine external building wash down which does not use detergents;
- i. Uncontaminated ground water or spring water;
- j. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
- k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but NOT intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

2. Except for flows from fire fighting activities, the Storm Water Pollution Prevention Plan must include:

- a. Identification of each allowable nonstorm water source;
- b. The location where it is likely to be discharged; and
- c. Descriptions of appropriate BMPs for each source.

3. If mist blown from cooling towers is included as one of the allowable nonstorm water discharges, the facility must specifically evaluate the potential for the discharges to be contaminated by chemicals used in the cooling tower. The permittee must determine that the levels of such chemicals in the discharges will not cause or contribute to a violation of an applicable water quality standard after implementation of the BMPs selected to control such discharges.

F. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the storm water discharge(s) from this facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not authorize the discharge of hazardous substances or oil resulting from an onsite spill. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (1998), 40 CFR Part 117 (1998) or 40 CFR Part 302 (1998) occurs during a 24-hour period, the permittee is required to notify the department in accordance with the requirements of Part III G as soon as he has knowledge of the discharge. Where a release enters a municipal separate storm sewer system (MS4), the permittee

shall also notify the owner of the MS4. In addition, the storm water pollution prevention plan required by this permit must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110 (1998), 40 CFR Part 117 (1998) and 40 CFR Part 302 (1998) or §62.1-44.34:19 of the Code of Virginia.

G. Storm water pollution prevention plans. A storm water pollution prevention plan is required to be developed for the facility. The plan shall be prepared in accordance with good engineering practices, and shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Permittees must implement the provisions of the storm water pollution prevention plan as a condition of this permit.

The storm water pollution prevention plan requirements of this permit may be fulfilled by incorporating by reference other plans or documents such as an erosion and sediment control plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under §311 of the Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the plan requirements of Part II G 4. If an erosion and sediment control plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulation, 4VAC50-30. All plans incorporated by reference into the storm water pollution prevention plan become enforceable under this permit.

1. Deadlines for plan preparation and compliance.

- a. For a storm water discharge associated with industrial activity that is existing on or before the effective date of this permit, the storm water pollution prevention plan shall be prepared and implemented as expeditiously as practicable, but not later than 270 days from the date of coverage under this permit. For a facility that was covered by the previous permit, a storm water pollution prevention plan was required to be developed and implemented for that facility. Within 120 days after the date of coverage under this permit, the existing storm water pollution prevention plan shall be reviewed and modified, as appropriate, to conform to the requirements of this permit. The existing storm water pollution prevention plans shall continue to be implemented until a new plan, if required, is developed and implemented.

b. The plan for any facility where industrial activity commences after the effective date of this permit, and except as provided elsewhere in this permit, shall be prepared, implemented and provide for compliance with the terms of the plan and this permit on or before the date of submission of a registration statement to be covered under this permit.

c. In cases where construction is necessary to implement measures required by the plan, the plan shall contain a schedule that provides compliance with the plan as expeditiously as practicable, but no later than three years from the date of coverage under this permit. Where a construction compliance schedule is included in the plan, the schedule shall include appropriate nonstructural and/or temporary controls to be implemented in the affected portion(s) of the facility prior to completion of the permanent control measure.

## 2. Signature and plan review.

a. The plan shall be signed in accordance with Part III K, and be retained on-site at the facility covered by this permit in accordance with Part III B.

b. The permittee shall make the storm water pollution prevention plan, annual site compliance inspection report, or other information available to the department upon request.

c. The director, or his designee, may notify the permittee in writing at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this part. Within 60 days of such notification from the director, or as otherwise provided by the director, the permittee shall make the required changes to the plan and shall submit to the department a written certification that the requested changes have been made.

3. Keeping plans current. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the state or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part II G 4 b of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

4. Contents of plan. The plan shall include, at a minimum, the following items:

a. Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility

organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

b. Description of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(1) Drainage. A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part II G 4 b (3) have occurred, and the locations of the following activities: fueling stations; vehicle and equipment maintenance and/or cleaning areas; loading/unloading areas; bag house or other dust control device, recycle/sedimentation pond, clarifier or other device used for the treatment of process wastewater, and the areas that drain to the treatment device, locations used for the storage or disposal of wastes; liquid storage tanks; processing areas; and storage areas. The map must indicate the outfall locations and the types of discharges contained in the drainage areas of the outfalls; and for each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(2) Inventory of exposed materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three

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years prior to the date of coverage under this general permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of coverage under this general permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(3) Spills and leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit.

(4) Sampling data. A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(5) Risk identification and summary of potential pollutant sources. A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

c. Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(1) Good housekeeping. Good housekeeping requires the clean and orderly maintenance of areas that may contribute pollutants to storm waters discharges. Particular attention should be paid to areas where raw materials are stockpiled, material handling areas, storage areas, liquid storage tanks and loading/unloading areas. The plan shall describe procedures performed to minimize the discharge of: spilled cement, aggregate (including sand and gravel), fly ash, settled dust, or other significant material in storm water from paved portions of the site that are exposed to storm water. Regular sweeping or other equivalent measures to minimize the

presence of these materials shall be employed. The frequency of sweeping or equivalent measures shall be specified in the plan based upon a consideration of the amount of industrial activity occurring in the areas and the frequency of precipitation, but it shall be a minimum of once a week if cement, aggregate, kiln dust, fly ash or settled dust are being handled/processed. Where practicable, efforts must be made to prevent the exposure of fine granular solids (cement, fly ash, etc.) to storm water by storing these materials in enclosed silos/hoppers, buildings or under other covering.

(2) Preventive maintenance. A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and appropriate maintenance of such equipment and systems.

(3) Spill prevention and response procedures. Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(4) Routine facility inspections. Facility personnel who are familiar with the industrial activity, the BMPs and the storm water pollution prevention plan shall be identified to inspect designated equipment and areas of the facility. Inspections shall be conducted while the facility is in operation and include, but are not limited to, the following areas exposed to storm water: material handling areas, above ground storage tanks, hoppers or silos, dust collection/containment systems, and truck wash down/equipment cleaning areas. The inspection frequency shall be specified in the plan based on a consideration of the level of industrial activity at the facility, but it shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained with the pollution prevention plan.

(5) Employee training. Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all

levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(6) Recordkeeping and internal reporting procedures. A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(7) Sediment and erosion control. The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(8) Management of runoff. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, wet detention/retention devices; or other equivalent measures.

d. Comprehensive site compliance evaluation. Qualified facility personnel who are familiar with the industrial activity, the BMPs and the storm water pollution prevention plan shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year. Such evaluations shall include the following:

(1) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether

additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(2) Based on the results of the evaluation, the description of potential pollutant sources identified in the plan in accordance with Part II G 4 b and pollution prevention measures and controls identified in the plan in accordance with Part II G 4 c shall be revised as appropriate within two weeks of such evaluation and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the evaluation.

(3) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with Part II G 4 d shall be made and retained as part of the storm water pollution prevention plan as required in Part III B. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part III K.

(4) Where compliance evaluation schedules overlap with inspections required under Part II G 4 c (4), the compliance evaluation may be conducted in place of one such inspection.

5. Special pollution prevention plan requirements:

a. Additional requirements for storm water discharges associated with industrial activity from facilities subject to §313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) reporting requirements. Potential pollutant sources for which the facility has reporting requirements under EPCRA 313 must be identified in the summary of potential pollutant sources as per Part II G 4 b.

b. Additional requirements for salt storage. Storage piles of salt used for deicing or other commercial or industrial purposes must be enclosed or covered to prevent exposure to precipitation (except for exposure resulting from adding or removing materials from the pile). Piles do not need to be enclosed or covered where storm water from the pile is not discharged to surface waters or the discharges from the piles are authorized under another permit.

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## Part III.

### Conditions Applicable To All VPDES Permits.

#### A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

#### B. Records.

1. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The individuals who performed the sampling or measurements;
  - c. The dates and times analyses were performed;
  - d. The individuals who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain (i) records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, (ii) copies of all reports required by this permit, and (iii) records of all data used to complete the registration statement for this permit for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

#### C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case

later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this subdivision:

- a. Any unanticipated bypass; and
  - b. Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within five days and shall contain:
- a. A description of the noncompliance and its cause;
  - b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
  - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Parts III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

NOTE: The immediate (within 24 hours) reports required in Parts III G, H and I may be made to the department's regional office by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24 hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
  - a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
    - (1) After promulgation of standards of performance under §306 of Clean Water Act which are applicable to such source; or
    - (2) After proposal of standards of performance in accordance with §306 of Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal;
  - b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which

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are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

## K. Signatory requirements.

1. Registration statements. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part III K 1, or by a duly authorized

representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Parts III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under §307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under §405(d) of the Clean Water Act within the time provided in the regulations that establish

these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by §510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U), and "upset" (Part III V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or

disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

## U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III U 2 and U 3.

### 2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.

### 3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Part III U 3 a.

## V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of

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claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- a. An upset occurred and that the permittee can identify the causes of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required in Part III I; and
- d. The permittee complied with any remedial measures required under Part III S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or his designee, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy at reasonable times any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part III Y 2, a permit may be transferred by the permittee to a new

owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part III Y 1, this permit may be automatically transferred to a new permittee if:

- a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

VA.R. Doc. No. R07-33; Filed November 7, 2007, 9:51 a.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The State Water Control Board has claimed an exemption from the Administrative Process Act in accordance with §2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Titles of Regulations:** **9VAC25-20. Fees for Permits and Certificates (amending 9VAC25-20-10, 9VAC25-20-20, 9VAC25-20-40, 9VAC25-20-50, 9VAC25-20-60, 9VAC25-20-90, 9VAC25-20-100, 9VAC25-20-110, 9VAC25-20-120, 9VAC25-20-130; adding 9VAC25-20-146, 9VAC25-20-147, 9VAC25-20-148, 9VAC25-20-149; repealing 9VAC25-20-30).**

**9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-100, 9VAC25-31-220, 9VAC25-31-290, 9VAC25-31-460; adding 9VAC25-31-475, 9VAC25-31-485, 9VAC25-31-505).**

**9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (amending 9VAC25-32-40, 9VAC25-32-60, 9VAC25-32-80, 9VAC25-32-100, 9VAC25-32-140, 9VAC25-32-210, 9VAC25-32-220, 9VAC25-32-240, 9VAC25-32-300; adding 9VAC25-32-310, 9VAC25-32-320, 9VAC25-32-330, 9VAC25-32-340, 9VAC25-32-350, 9VAC25-32-355, 9VAC25-32-360, 9VAC25-32-370, 9VAC25-32-380, 9VAC25-32-390, 9VAC25-32-400, 9VAC25-32-410, 9VAC25-32-420, 9VAC25-32-430, 9VAC25-32-440, 9VAC25-32-450, 9VAC25-32-460, 9VAC25-32-470, 9VAC25-32-480, 9VAC25-32-490, 9VAC25-32-500, 9VAC25-32-510, 9VAC25-32-520, 9VAC25-32-530, 9VAC25-32-540, 9VAC25-32-550, 9VAC25-32-560, 9VAC25-32-570, 9VAC25-32-580, 9VAC25-32-590, 9VAC25-32-600, 9VAC25-32-610, 9VAC25-32-620, 9VAC25-32-630, 9VAC25-32-640, 9VAC25-32-650, 9VAC25-32-660, 9VAC25-32-670, 9VAC25-32-680, 9VAC25-32-690, 9VAC25-32-700, 9VAC25-32-710, 9VAC25-32-720, 9VAC25-32-730, 9VAC25-32-740, 9VAC25-32-750, 9VAC25-32-760).**

**9VAC25-790. Sewage Collection and Treatment Regulations (amending 9VAC25-790-10, 9VAC25-790-50, 9VAC25-790-60, 9VAC25-790-120, 9VAC25-790-130, 9VAC25-790-150, 9VAC25-790-180, 9VAC25-790-200, 9VAC25-790-240, 9VAC25-790-540, 9VAC25-790-550, 9VAC25-790-570, 9VAC25-790-580, 9VAC25-790-590, 9VAC25-790-600, 9VAC25-790-660, 9VAC25-790-880).**

Statutory Authority: §62.1-44.15 of the Code of Virginia.

Effective Date: January 1, 2008.

Agency Contact: Brian Cauthorn, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone 804-698-4592, FAX 804-698-4416, or email [bacauthorn@deq.virginia.gov](mailto:bacauthorn@deq.virginia.gov).

Summary:

*The amendments reflect changes to §62.1-44.19:3 of the Code of Virginia as amended by the 2007 Acts of Assembly and the 2005 Acts of Assembly.*

*The amendments conform the regulations with the legislative actions that transferred oversight of the regulatory program pertaining to biosolids from the Virginia Department of Health to the Virginia Department of Environmental Quality. The legislation required other regulatory changes pertaining to land application of biosolids and required changes to the Virginia Pollutant Discharge Elimination System Permit Regulation that were not made prior to the date of this regulatory action.*

*The Department of Health administered the permitting program for biosolids with the Biosolids Use Regulation (12VAC5-585). This is a comprehensive regulation that covers permitting requirements for land application, technical requirements for treatment, handling and storage, and procedures for the collection of established fees. As the State Water Control Board administers separate regulations that address these topics, the transfer of regulatory requirements was accomplished by transferring language from the Department of Health into the State Water Control Board regulations as appropriate.*

**9VAC25-20-10. Definitions.**

Unless otherwise defined in this chapter or unless the context clearly indicates otherwise, the terms used in this regulation shall have the meanings ascribed to them by the State Water Control Law, §62.1-44.3; the board's Virginia Pollutant Discharge Elimination System Permit Regulation, 9VAC25-31-10; the board's Virginia Pollution Abatement Permit Regulation, 9VAC25-32-10; the board's Virginia Water Protection Permit Program Regulation, 9VAC25-210-10; the board's Surface Water Management Area Regulation, 9VAC25-220-10; and the board's Ground Water Withdrawal Regulations, 9VAC25-610-10, including any general permits issued thereunder.

"Applicant" means for the purposes of this chapter any person filing an application for issuance, reissuance, or modification, except as exempted by 9VAC25-20-50, of a permit, certificate or special exception or filing a registration statement or application for coverage under a general permit issued in response to Chapters 3.1 (§62.1-44.2 et seq.), 24 (§62.1-242 et seq.), and 25 (§62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Application" means for the purposes of this chapter the forms approved by the State Water Control Board for applying for issuance or reissuance of a permit, certificate or special exception or for filing a registration statement or application for coverage under a general permit issued in response to Chapters 3.1, 24, and 25 of Title 62.1 of the Code of Virginia. In the case of modifications to an existing permit, permit authorization, certificate or special exception requested by the permit, permit authorization, certificate or special exception holder and not exempted by 9VAC25-20-50, the application shall consist of the formal written request and any accompanying documentation submitted by the permit, permit authorization, certificate or special exception holder to initiate the modification.

"Biosolids" means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains acceptable levels of pollutants, such that it is acceptable for use for land application.

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marketing or distribution in accordance with 9VAC25-31 or 9VAC25-32.

"Dry tons" means dry weight established as representative of land applied biosolids and expressed in units of English tons.

"Existing permit" means for the purposes of this chapter a permit, permit authorization, certificate or special exception issued by the board and currently held by an applicant.

"Established fees" means a fee established by the department per dry ton of biosolids managed by land appliers.

"Land application" means the distribution of either treated wastewater of acceptable quality, referred to as effluent, or stabilized sewage sludge of acceptable quality, referred to as biosolids, upon, or insertion into, the land with a uniform application rate for the purpose of utilization, or assimilation. Bulk disposal of stabilized sludge in a confined area, such as in landfills, is not land application. Sites approved for land application of biosolids in accordance with 9VAC25-31 or 9VAC25-32 are not to be considered to be treatment works.

"Land applier" means someone who land applies biosolids pursuant to a valid permit from the department as set forth in 9VAC25-31 or 9VAC25-32.

"Local monitor" means a person or persons employed by local government to perform the duties of monitoring the operations of land appliers pursuant to a local ordinance.

"Major modification" means for the purposes of this chapter modification or amendment of an existing permit, permit authorization, certificate or special exception before its expiration which is not a minor modification as defined in this regulation.

"Major reservoir" means for the purposes of this chapter any new or expanded reservoir with greater than or equal to 17 acres of total surface water impacts (stream and wetlands), or a water withdrawal of greater than or equal to 3,000,000 gallons in any one day.

"Minor modification" means for the purposes of this chapter minor modification or amendment of an existing permit, permit authorization, certificate or special exception before its expiration as specified in 9VAC25-31-400, 9VAC25-32-240, 9VAC25-210-210, 9VAC25-220-230, or in 9VAC25-610-330. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Minor reservoir" means for the purposes of this chapter any new or expanded reservoir with less than 17 acres of total surface water impacts (stream and wetlands), or a water withdrawal of less than 3,000,000 gallons in any one day.

"New permit" means for the purposes of this chapter a permit, permit authorization, certificate or special exception issued by the board to an applicant that does not currently hold and has never held a permit, permit authorization, certificate or special exception of that type, for that activity, at that location.

"Reimbursement application" means forms approved by the department to be used to apply for reimbursement of local monitoring costs for land application of biosolids in accordance with the provisions of this regulation. The application shall consist of a formal written request and any accompanying documentation submitted by a local government in accordance with a local ordinance.

"Revoked permit" means for the purposes of this chapter an existing permit, permit authorization, certificate or special exception which is terminated by the board before its expiration.

"Single jurisdiction" means for the purposes of this chapter a single county or city. The term county includes incorporated towns which are part of the county.

## **9VAC25-20-20. Purpose.**

Section 62.1-44.15:6 of the Code of Virginia requires the promulgation of regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, Department of Game and Inland Fisheries', and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, or modify any permit, permit authorization or certificate which the board has the authority to issue from the applicant for such permit, permit authorization or certificate. Section 62.1-44.19:3 of the Code of Virginia requires the promulgation of regulations establishing a fee to be charged to all permit holders and persons applying for permits and permit modifications associated with land application of sewage sludge. Section 62.1-44.19:3 of the Code of Virginia also requires the promulgation of regulations requiring the payment of a fee by persons land applying sewage sludge. These regulations establish the required fee assessment and collection system.

## **9VAC25-20-30. Authority. (Repealed.)**

~~The authority for this chapter is pursuant to §§62.1-44.15(7) and (10) and 62.1-44.15:6 of the Code of Virginia.~~

## **9VAC25-20-40. Applicability.**

A. This chapter applies to:

1. All applicants for issuance of a new permit, permit authorization or certificate, or reissuance of an existing

permit, permit authorization or certificate, except as specifically exempt under 9VAC25-20-50 A. The fee due shall be as specified under 9VAC25-20-110 or 9VAC25-20-130.

2. All permit, permit authorization or certificate holders who request that an existing permit, permit authorization or certificate be modified, except as specifically exempt under 9VAC25-20-50 A 3 or 9VAC25-20-50 A 6. The fee due shall be as specified under 9VAC25-20-120.

3. All land applicers land applying biosolids on permitted sites in the Commonwealth of Virginia, except as specifically exempt under 9VAC25-20-50 C. The fee due shall be as specified under 9VAC25-20-146.

B. An applicant for a permit, permit authorization or certificate involving a permit that is to be revoked and reissued shall be considered an applicant for a new permit. The fee due shall be as specified under 9VAC25-20-110.

C. Permit maintenance fees apply to each Virginia Pollutant Discharge Elimination System (VPDES) permit holder and each Virginia Pollution Abatement (VPA) permit holder, except those specifically exempt under 9VAC25-20-50 B of this chapter. The fee due shall be as specified under 9VAC25-20-142.

D. Virginia Water Protection (VWP) Individual/Minimum Instream Flow permit fees apply to any permit for the construction of an intake on a stream or river, or to any permit for the construction of a new intake on an existing reservoir. The fee due shall be as specified under 9VAC25-20-110 or 9VAC25-20-120, as applicable.

E. VWP Individual/Reservoir permit fees apply to any permit for the construction of a new reservoir, or the expansion of an existing reservoir in which one of the purposes of the reservoir is for water supply. The fee due shall be as specified under 9VAC25-20-110 or 9VAC25-20-120, as applicable. VWP Individual/Reservoir permit fees do not apply to the construction of any impoundment, pond or lake in which water supply is not part of the project's purpose.

**9VAC25-20-50. Exemptions.**

A. No permit application fees will be assessed to:

1. An applicant for a permit, permit authorization, certificate or special exception pertaining to a farming operation engaged in production for market.
2. An applicant for a permit, permit authorization, or certificate pertaining to maintenance dredging for federal navigation channels or other U.S. Army Corps of Engineers-sponsored dredging projects.
3. Permit holders who request minor modifications or minor amendments to permits, permit authorizations or certificates as defined in 9VAC25-20-10.

4. Permit, permit authorization or certificate holders whose permits, permit authorizations or certificates are modified or amended at the initiative of the board.

5. VPDES permit holders or VPA permit holders for the regularly scheduled renewal of an individual permit for an existing facility, except VPDES and VPA permit holders whose permits expire on or before December 27, 2004.

6. An applicant for a permit, permit authorization, permit modification, or certificate pertaining solely to biosolids research.

B. No permit maintenance fees will be assessed to:

1. VPDES and VPA facilities operating under a general permit.
2. Permits pertaining to a farming operation engaged in production for market.
3. Virginia Water Protection (VWP), Surface Water Withdrawal (SWW), and Ground Water Withdrawal (GWW) permits, permit authorizations, certificates and special exceptions.

4. Permits pertaining solely to biosolids research.

C. No fee shall be imposed on the land application of materials classified as "exceptional quality biosolids" or the equivalent thereof, as defined by 9VAC25-32.

Part II

Payment, Deposits and Use of Fees

**9VAC25-20-60. Due dates.**

A. Virginia Pollutant Discharge Elimination System (VPDES) and Virginia Pollution Abatement (VPA) permits.

1. Application fees for all new permit applications are due on the day an application is submitted and shall be paid in accordance with 9VAC25-20-70 A. Applications will not be processed without payment of the required fee.
2. For reissuance of permits that expire on or before December 27, 2004, the application fee for new permit applications as set forth in this regulation is due on the day the application is submitted.
3. An application fee is due on the day an application is submitted for either a major modification or a permit reissuance that occurs (and becomes effective) before the stated permit expiration date. There is no application fee for a regularly scheduled renewal of an individual permit for an existing facility, unless the permit for the facility expires on or before December 27, 2004. There is no application fee for a major modification or amendment that is made at the board's initiative.
4. Permit maintenance fees shall be paid to the board by October 1 of each year. Additional permit maintenance

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fees for facilities in a toxics management program, and for facilities that have more than five process wastewater discharge outfalls at a single facility (not including "internal" outfalls) shall also be paid to the board by October 1 of each year. No permit will be reissued or automatically continued without payment of the required fee.

a. Existing individual permit holders with an effective permit as of July 1, 2004, (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the board by October 1, 2004, unless one of the following conditions apply:

(1) The permit is terminated prior to October 1, 2004; or

(2) The permit holder applied or reapplied for a municipal minor VPDES permit with a design flow of 10,000 gallons per day or less between July 1, 2003, and July 1, 2004, and paid the applicable permit application fee.

b. Effective April 1, 2005, any permit holder whose permit is effective as of April 1 of a given year (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the board by October 1 of that same year.

B. Surface Water Withdrawal (SWW), and Ground Water Withdrawal (GWW) permits.

1. All permit application fees are due on the day an application is submitted and shall be paid in accordance with 9VAC25-20-70 A. Applications will not be processed without payment of the required fee. No permit will be automatically continued without payment of the required fee.

2. For reissuance of GWW permits that expire on or before March 27, 2005, the application fee for new permit applications as set forth in this regulation is due on the day the application is submitted.

3. Application fees for major modifications or amendments are due on the day an application is submitted. Applications will not be processed without payment of the required fee. There is no fee for a major modification or amendment that is made at the board's initiative.

C. Virginia Water Protection (VWP) permits.

1. VWP permit application fees shall be paid in accordance with 9VAC25-20-70 A. Review of applications may be initiated before the fee is received; however, draft permits or authorizations shall not be issued prior to payment of the required fee. No permit or permit authorization shall be automatically continued without payment of the required fee.

2. VWP application fees for major modifications shall be paid in accordance with 9VAC25-20-70 A. Review of

applications may be initiated before the fee is received; however, major modifications shall not be issued prior to payment of the required fee. There is no application fee for a major modification that is made at the board's initiative.

D. Sewage sludge land application fees. Except as specified in this regulation, all fees are due on the day specified by the department. Payment of the fee shall be made by land appliers following notification by the department of the fee due. No permit or modification of an existing permit will be approved in the jurisdiction where payment of the established fee by the land applier has not been received by the due date, until such time that the fees are paid in full. Existing permits may be revoked or approved sources may be reclassified as unapproved unless the required fee is paid within 60 days of the notification by the department of the fee due.

## **9VAC25-20-90. Deposit and use of fees.**

A. Sludge Management Fund. All sewage sludge land application fees collected from permit holders who land apply sewage sludge in the Commonwealth of Virginia, and fees collected from permit holders and persons applying for permits and permit modifications pursuant to §62.1-44.19:3 of the Code of Virginia shall be deposited into the Sludge Management Fund established by, and used and accounted for as specified in §62.1-44.19:3 of the Code of Virginia. Payments to the Department of Conservation and Recreation for their costs related to implementation of the sewage sludge land application program and to localities with duly adopted ordinances providing for the testing and monitoring of the land application of sewage sludge will be made from this fund. Fees collected shall be exempt from statewide indirect costs charged and collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation to the department.

B. State Water Control Board Permit Program Fund. All fees collected in response to this chapter and not deposited into the Sludge Management Fund shall be deposited into the State Water Control Board Permit Program Fund established by, and used and accounted for as specified in §62.1-44.15:7 of the Code of Virginia. Payment to the Departments of Conservation and Recreation and Game and Inland Fisheries for permit applications they are required under state law to review will be made from this fund. Fees collected shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

### Part III

#### Determination of Fee Amount

## **9VAC25-20-100. General.**

Each application for a new permit, permit authorization or certificate, each application for reissuance of a permit, permit authorization or certificate, each application for major modification of a permit, permit authorization or certificate,

~~and~~ each revocation and reissuance of a permit, permit authorization or certificate, ~~and each application of a dry ton of sewage sludge is a separate action and shall be assessed a separate fee, as applicable.~~ The fees for each type of permit, permit authorization or certificate that the board has the authority to issue, reissue or modify will be as specified in this part.

**9VAC25-20-110. Fee schedules for individual VPDES and VPA new permit issuance, and individual VWP, SWW and GWW new permit issuance and existing permit reissuance.**

A. Virginia Pollutant Discharge Elimination System (VPDES) permits. The following fee schedules apply to applications for issuance of a new individual VPDES permit or certificate. (Note: All flows listed in the table below are facility "design" flows.)

VPDES Industrial Major	\$24,000
VPDES Municipal Major	\$21,300
VPDES Municipal Major Stormwater/MS4	\$21,300
VPDES Industrial Minor/No Standard Limits	\$10,200
VPDES Industrial Minor/Standard Limits	\$3,300
VPDES Industrial Stormwater	\$7,200
VPDES Municipal Minor/Greater Than 100,000 GPD	\$7,500
VPDES Municipal Minor/ 10,001 GPD- 100,000 GPD	\$6,000
VPDES Municipal Minor/ 1,001 GPD- 10,000 GPD	\$5,400
VPDES Municipal Minor/1,000 GPD or less	\$2,000
<u>VPDES Municipal Minor/1,000 GPD or less that includes authorization for land application or land disposal of sewage sludge</u>	<u>\$5,000</u>
VPDES Municipal Minor Stormwater/MS4	\$2,000

For a new VPDES permit that includes authorization for land application or land disposal of sewage sludge, \$5,000 of the fee will be deposited into the Sludge Management Fund.

B. Virginia Pollution Abatement (VPA) permits. The following fee schedules apply to applications for issuance of a new individual VPA permit or certificate. (Note: Land

application rates listed in the table below are facility "design" rates.)

VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year	\$15,000
VPA Industrial Wastewater Operation/Land Application of Less Than 10 Inches Per Year	\$10,500
VPA Industrial Sludge Operation	\$7,500
VPA Municipal Wastewater Operation	\$13,500
VPA Municipal Sludge Operation	<del>\$7,500</del> <u>\$5,000</u>
All other operations not specified above	\$750

C. Virginia Water Protection (VWP) permits. The following fee schedules apply to applications for issuance of a new individual and reissuance of an existing individual VWP permit or certificate. Only one permit application fee shall be assessed per application; for a permit application involving more than one of the operations described below, the governing fee shall be based upon the primary purpose of the proposed activity. (Note: Withdrawal amounts shown in the table below are maximum daily withdrawals.)

VWP Individual/Surface Water Impacts (Wetlands, Streams and/or Open Water)	\$2,400 plus \$220 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) (\$60,000 maximum)
VWP Individual/Minimum Instream Flow - Withdrawals equal to or greater than 3,000,000 gallons on any day	\$25,000
VWP Individual/Minimum Instream Flow - Withdrawals between 2,000,000 and 2,999,999 gallons on any day	\$20,000

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VWP Individual/Minimum Instream Flow - Withdrawals between 1,000,000 and 1,999,999 gallons on any day	\$15,000
VWP Individual/Minimum Instream Flow - Withdrawals less than 1,000,000 gallons on any day that do not otherwise qualify for a general VWP permit for water withdrawals	\$10,000
VWP Individual/Reservoir - Major	\$35,000
VWP Individual/Reservoir - Minor	\$25,000
VWP Individual/Nonmetallic Mineral Mining	\$2,400 plus \$220 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) (\$7,500 maximum)

D. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§62.1-242 et seq.) of Title 62.1 of the Code of Virginia. The following fee schedules apply to applications for issuance of a new individual, and reissuance of an existing individual SWW permit or certificate.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Surface Water Withdrawal	\$12,000

E. Ground Water Withdrawal (GWW) Permits issued in response to Chapter 25 (§62.1-254 et seq.) of Title 62.1 of the Code of Virginia. The following fee schedules apply to applications for issuance of a new individual, and reissuance of an existing individual GWW permit or certificate.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Ground Water Withdrawal/Initial Permit for an Existing Withdrawal Based Solely on Historic Withdrawals	\$1,200
Ground Water Withdrawal	\$6,000

## 9VAC25-20-120. Fee schedules for major modification of individual permits or certificates requested by the permit or certificate holder.

The following fee schedules apply to applications for major modification of an individual permit or certificate requested by the permit or certificate holder:

1. Virginia Pollutant Discharge Elimination System (VPDES) permits. The application fees listed in the table below apply to a major modification that occurs (and becomes effective) before the stated permit expiration date. (Note: All flows listed in the table below are facility "design" flows.)

VPDES Industrial Major	\$12,000
VPDES Municipal Major	\$10,650
VPDES Municipal Major Stormwater/MS4	\$5,150
VPDES Industrial Minor/No Standard Limits	\$5,100
VPDES Industrial Minor/Standard Limits	\$3,300
VPDES Industrial Stormwater	\$3,600
VPDES Municipal Minor/Greater Than 100,000 GPD	\$3,750
VPDES Municipal Minor/10,001 GPD - 100,000 GPD	\$3,000
VPDES Municipal Minor/1,001 GPD - 10,000 GPD	\$2,700
VPDES Municipal Minor/1,000 GPD or Less	\$1,000
VPDES Municipal Minor Stormwater/MS4	\$1,000

The fee for modification of a VPDES permit due to changes relating to authorization for land application or land disposal of sewage sludge shall be \$1,000.

2. Virginia Pollution Abatement (VPA) permits. The application fees listed in the table below apply to a major modification that occurs (and becomes effective) before the stated permit expiration date. (Note: Land application rates listed in the table below are facility "design" rates.)

VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year	\$7,500
VPA Industrial Wastewater Operation/Land Application of Less Than 10 Inches Per Year	\$5,250
VPA Industrial Sludge Operation	\$3,750
VPA Municipal Wastewater Operation	\$6,750
VPA Municipal Sludge Operation	<del>\$3,750</del> <u>\$1,000</u>
All other operations not specified above	\$375

3. Virginia Water Protection (VWP) permits. (Note: Only one permit application fee shall be assessed per application; for a permit application involving more than one of the operations described below, the governing fee shall be based upon the primary purpose of the proposed activity.)

VWP Individual/Surface Water Impacts (Wetlands, Streams and/or Open Water)	\$1,200 plus \$110 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) (\$30,000 maximum)
VWP Individual/Minimum Instream Flow	\$5,000
VWP Individual/Reservoir (Major or Minor)	\$12,500

VWP Individual/Nonmetallic Mineral Mining	\$1,200 plus \$110 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) (\$3,750 maximum)
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4. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§62.1-242 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Surface Water Withdrawal	\$6,000

5. Ground Water Withdrawal (GWW) Permits issued in response to Chapter 25 (§62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Ground Water Withdrawal/Initial Permit for an Existing Withdrawal Based Solely on Historic Withdrawals	\$600
Ground Water Withdrawal	\$3,000

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## 9VAC25-20-130. Fees for filing registration statements or applications for general permits issued by the board.

The following fees apply to filing of applications or registration statements for all general permits issued by the board, except:

1. The fee for filing a registration statement for coverage under 9VAC25-110 (General VPDES Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 GPD) is \$0.
2. The fee for filing a registration statement for coverage under 9VAC25-120 (General VPDES Permit Regulation for Discharges From Petroleum Contaminated Sites) is \$0.
3. The fee for filing an application or registration statement for coverage under a VWP General Permit issued by the board shall be:

VWP General/Less Than 4,356 sq. ft. (1/10 acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	\$0
VWP General/4,356 sq. ft. to 21,780 sq. ft. (1/10 acre to 1/2 acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	\$600
VWP General/21,781 sq. ft. to 43,560 sq. ft. (greater than 1/2 acre to one acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	\$1,200
VWP General/43,561 sq. ft. to 87,120 sq. ft. (greater than one acre to two acres) of Surface Water Impact (Wetlands, Streams and/or Open Water)	\$1,200 plus \$120 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 43,560 sq. ft. (one acre) (\$2,400 maximum)
VWP General/Minimum Instream Flow/Reservoir - Water withdrawals and/or pond construction	\$2,400

### 4. VPDES Storm Water General Permits.

- a. Except as specified in subdivision 4 b of this section, the fee for filing a registration statement for coverage

under a VPDES storm water general permit issued by the board shall be:

VPDES General/Industrial Storm Water Management	\$500
VPDES General/Storm Water Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development equal to or greater than 5 acres)	\$500
VPDES General/Storm Water Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development less than 5 acres)	\$300

- b. Owners of facilities that are covered under the Industrial Activity (VAR5) and Construction Site (VAR10) storm water general permits that expire on June 30, 2004, and who are reapplying for coverage under the new general permits that are effective on July 1, 2004, must submit an application fee of \$600 to reapply.

5. Except as specified in subdivisions 1, 2, 3 and 4 of this section, the fee for filing an application or registration statement for coverage under any general permit issued by the board shall be \$600.

### Part IV

#### Sewage Sludge Fees and Reimbursable Costs

### 9VAC25-20-146. Established fees.

A. Land appliers shall remit the established fees to the department as specified in this regulation. The land appliers shall collect the required fees from the owners of the sewage treatment works and facilities that generate the biosolids. Such works and facilities shall be approved sources of biosolids in accordance with this regulation. Land application shall only include biosolids from approved sources as listed in the land application permit. The established fee shall be imposed on each dry ton of biosolids that is land applied in the Commonwealth of Virginia in accordance with 9VAC25-31 or 9VAC25-32.

B. The amount of the established fee and disbursement are as follows:

1. The fee shall be \$7.50 per dry ton of biosolids land applied in the Commonwealth of Virginia.
2. Disbursement of the established fees collected by the department shall be made to reimburse or partially reimburse those counties, cities and towns with duly adopted local ordinances that submit documentation of reimbursable expenses acceptable to the department as provided for in this regulation.

3. Disbursement of the established fees collected by the department shall be made to reimburse the Department of Conservation and Recreation's costs for implementation of the sewage sludge application program.

**9VAC25-20-147. Records and reports.**

A. Records. Permittees shall maintain complete records of the land application activities and amounts of biosolids that they land apply in the Commonwealth of Virginia. Such records shall be maintained by the permittee in a form that is available for inspection by the department for five years after the date of the activity. Records of land application activities shall include the following minimum information:

1. Name of permittee, DEQ permit number and dates of activity.
2. Identification of land application site, including the county where taxes are remitted and permitted site identification name, letters and numbers, as appropriate.
3. The source of biosolids and approximate field area receiving those biosolids.
4. The amount of biosolids applied in dry tons and the method and calculations used to determine the reported value.
5. Dates and type of any interactions with local monitors and names of individuals involved in the interactions.
6. Name of responsible representative of permittee and a statement signed and dated by that representative indicating that the information submitted has been verified by that representative as correctly reported in accordance with this regulation.

B. Reports and notification. The permittee shall submit a monthly report by the 15th day of the month unless another date is specified in the permit in accordance with 9VAC25-32-80 I 4, following the month that land application occurs. That report shall include the recorded information listed in subsection A of this section and present a calculation of the total fee that is required in accordance with this regulation. The submitted report shall include a summary list of the total amount of biosolids applied and the calculated fee based on the land-applied biosolids for each county in which land application occurred in alphabetical order by county.

**9VAC25-20-148. Reimbursable local monitoring costs.**

The following describes the kinds of activities for which expenses may, if reasonable, be submitted for reimbursement:

1. Charges for reviewing the permit to identify potential health and environmental protection issues upon notification by the permittee that operations will be initiated on permitted sites.

2. Charges and expenses, including local travel for site monitoring, inspections, collection and delivery of samples to a nearby laboratory and examination of records.

3. Charges for recordkeeping.
4. Charges for complaint and incident response.
5. Charges for biosolids and soil sample testing costs.
6. Charges for the training of local monitors.

**9VAC25-20-149. Reimbursement of local monitoring costs.**

Reimbursement of local monitoring costs deemed reasonable by the department will be made in order of receipt of an acceptable invoice. Such invoices will be reimbursed for reasonable costs up to \$2.50, as adjusted, per dry ton of biosolids land applied in a county during the period of time specified in the submitted invoice. If sufficient revenue exists from the fees collected monthly, then invoiced claims exceeding \$2.50, as adjusted, per dry ton of biosolids land applied in that county, during the period of time specified in the submitted invoice, may be released for reimbursement of up to \$4.00 per dry ton of biosolids land applied in that county during the month that the reimbursable costs were incurred, based on the order of receipt of the invoice.

A. Application. Local government must submit a reimbursement application to request reimbursement from the department. All information is to be clearly typed or printed and all required or supporting documents must be attached. The county administrator or designated local biosolids monitor shall sign and date the application where indicated. The original signed application with one copy of each of the supporting documents is to be forwarded to the department. Applications may not be submitted by facsimile or through electronic means. A reimbursement invoice form as described in this regulation must be completed before a reimbursement application can be submitted. The invoice form must include all expenses for which reimbursement is requested during the designated time period.

B. Application forms and submittal. The application for reimbursement must be submitted within 30 days of the last day of the month in which the reimbursable activity occurred. All applications received after this time frame will be ineligible for reimbursement. The following is a description of the application forms and an explanation of their use. The application forms and detailed instructions can be obtained from the department.

1. Form 1 - Reimbursement Application. An invoice form shall be submitted with each application for reimbursement. The invoice form should list all reimbursable charges. To be reimbursed for eligible expenses, an applicant must provide documentation to demonstrate that the expenses were incurred. Invoices are

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acceptable proof of incurred expenses. Include legible copies of invoices signed by the local biosolids monitor or agent who performed or managed the monitoring activities. All invoices are to include the following:

- a. DEQ permit number and site identification;
- b. Number or site address;
- c. Biosolids contractor's name;
- d. Date and type of activity monitored;
- e. Name of biosolids monitor;
- f. Number of hours to be reimbursed and charge per hour;
- g. List of expenses for which reimbursement is sought;
- h. Type of sampling activity performed and associated laboratory expense vouchers.

The application requires the county administrator to certify that the responsible official has read and understands the requirements for reimbursement and that the application submitted is not fraudulent. The local monitor must attest to the accuracy and completeness of the information provided.

2. Form 2 - Multiple Owners Payment Assignment Form. When there are multiple local governments as claimants, a separate, signed and notarized invoice form for each claimant must be filled out and submitted with the application.

Submittal of the original completed reimbursement application, including the application worksheets and the appropriate supporting documentation, should be accomplished by mailing these documents to: Department of Environmental Quality, Receipts Control, P.O. Box 1105, Richmond, VA 23218.

## C. Processing applications.

1. If contacted by the department regarding an incomplete reimbursement application, an applicant will have 14 days from the date of the call or letter to submit the information requested and cure any deficiencies. Extensions of the 14-day deadline will not be granted. An application that does not contain all of the required information after the 14-day time frame may be rejected or processed "as is," which can result in complete denial or a partial reimbursement.

2. Only invoices pertaining to the monitoring activity claimed in the current application will be accepted. Costs omitted from previous claims are ineligible for reimbursement in subsequent claims. Likewise, invoices submitted in previous claims will not be eligible documentation for reimbursement of costs in subsequent claims. To reduce the risk of disqualification of costs, costs for different monitoring activities should be invoiced

separately. If possible, invoices should be structured so that costs are grouped according to task or activity.

## D. Reconsideration process.

1. Claimants may submit a written response indicating why costs denied on the reimbursement decision should be paid.

2. If the claimant disagrees with the decision in the reimbursement payment package, a notice of intent (NOI) to object and a reconsideration claim form must be submitted to the department within the filing deadlines specified in the reconsideration procedure package.

If filing deadlines are not met, the decision in the reimbursement payment package is final. This written objection is to be in the format specified in the reconsideration procedure package and explain the reasons for disagreement with the decisions in the reimbursement payment letter and supply any additional supporting documentation. Upon receipt of this information and at the claimant's request, the department may schedule a reconsideration meeting to reevaluate the denied costs.

3. Claimants will be given an opportunity to contest the reimbursement decisions in accordance with the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

Within the filing deadline, the claimant must submit a written summary of the issues that will be contested using the reconsideration claim form.

4. The reconsideration procedures provide the department the opportunity to correct certain errors. The following types of errors can be corrected:

- a. Failure of the reviewer to verify an invoice form that was received prior to completing the verification package for the reimbursement.
- b. Errors the reviewer makes in verifying an invoice form.
- c. Failure of the claimant to submit all invoices.

5. Notwithstanding the above, some types of errors cannot be corrected. It is the responsibility of the claimant or consultant, or both, to ensure that all application forms (invoice forms, and sampling and testing verification) are completely and accurately filled out. Failure to exercise proper care in preparing an application may result in a denial of costs, which cannot be corrected through the reconsideration process, including:

- a. Items omitted from the invoice form will not be eligible for reimbursement.
- b. Unverified sampling and testing results will not be eligible for reimbursement.

c. No additions or revisions to the invoice forms will be accepted from the claimant after the reviewer forwards the verification package to the department.

d. Using one invoice in multiple claims. Invoices submitted in an application cannot be used as documentation for reimbursement of costs in subsequent claims.

e. The following are types of errors that cannot be corrected:

- (1) Failure to claim performed work on the invoice.
- (2) Failure to claim sampling and testing costs as authorized.
- (3) Failure to claim all costs in a submitted invoice.
- (4) Failure to submit to the reviewer all supporting documentation to demonstrate the necessity of work performed that exceeds expected activities. Such documentation must be submitted before the reviewer forwards the verification package to the department.

Part ~~IV~~ V

Delegation of Authority

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Water Quality Division Permit Application Fee Form (rev. 7/04).

Form 1 Biosolids Land Application Local Monitoring Expenses - Reimbursement Invoice, 2007.

Form 2 Biosolids Land Application Fee - Reimbursement Multiple Owners Payment Assignment, 2007.

Form 3 Biosolids Land Application Fee - Reimbursement Notice of Intent to Seek Reconsideration, rev. 8/07.

Form 4 Biosolids Land Application Fee - Reimbursement Reconsideration Claim Form, rev. 8/07.

**9VAC25-31-100. Application for a permit.**

A. Duty to apply. Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 9VAC25-31-420 through 9VAC25-31-720 and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this chapter, or a user of a privately owned

treatment works unless the board requires otherwise, shall submit a complete application to the department in accordance with this section. All concentrated animal feeding operations have a duty to seek coverage under a VPDES permit.

B. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

C. Time to apply.

1. Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. New discharges composed entirely of storm water, other than those dischargers identified in 9VAC25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9VAC25-31-120 B.

2. All TWTDS whose sewage sludge use or disposal practices are regulated by 9VAC25-31-420 through 9VAC25-31-720 must submit permit applications according to the applicable schedule in subdivision 2 a or b of this subsection.

a. A TWTDS with a currently effective VPDES permit must submit a permit application at the time of its next VPDES permit renewal application. Such information must be submitted in accordance with subsection D of this section.

b. Any other TWTDS not addressed under subdivision 2 a of this subsection must submit the information listed in subdivisions 2 b (1) through (5) of this subsection to the department within one year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using a form provided by the department. The board will determine when such TWTDS must submit a full permit application.

(1) The TWTDS's name, mailing address, location, and status as federal, state, private, public or other entity;

(2) The applicant's name, address, telephone number, and ownership status;

(3) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the

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requirements of subdivision P 8 d of this section, the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal and the location of any land application sites;

(4) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(5) The most recent data the TWTDS may have on the quality of the sewage sludge.

c. Notwithstanding subdivision 2 a or b of this subsection, the board may require permit applications from any TWTDS at any time if the board determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

d. Any TWTDS that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the department at least 180 days prior to the date proposed for commencing operations.

D. Duty to reapply. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

## E. Completeness.

1. The board shall not issue a permit before receiving a complete application for a permit except for VPDES general permits. An application for a permit is complete when the board receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

2. No application for a VPDES permit to discharge sewage into or adjacent to state waters from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

3. No application for a new individual VPDES permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22

(§15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. The county, city or town shall inform in writing the applicant and the board of the discharging facility's compliance or noncompliance not more than 30 days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city or town fail to provide such written notification within 30 days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid VPDES permit had been issued prior to March 10, 2000.

4. A permit application shall not be considered complete if the board has waived application requirements under subsection J or P of this section and the EPA has disapproved the waiver application. If a waiver request has been submitted to the EPA more than 210 days prior to permit expiration and the EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

5. In accordance with §62.1-44-19:3 A of the Code of Virginia, no application for a permit or variance to authorize the storage of sewage sludge shall be complete unless it contains certification from the governing body of the locality in which the sewage sludge is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

F. Information requirements. All applicants for VPDES permits, other than POTWs and other TWTDS, shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in subsections G through K of this section).

1. The activities conducted by the applicant which require it to obtain a VPDES permit;

2. Name, mailing address, and location of the facility for which the application is submitted;

3. Up to four SIC codes which best reflect the principal products or services provided by the facility;

4. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;

5. Whether the facility is located on Indian lands;

6. A listing of all permits or construction approvals received or applied for under any of the following programs:

- a. Hazardous Waste Management program under RCRA (42 USC §6921);
- b. UIC program under SDWA (42 USC §300h);
- c. VPDES program under the CWA and the law;
- d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC §4701 et seq.);
- e. Nonattainment program under the Clean Air Act (42 USC §4701 et seq.);
- f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC §4701 et seq.);
- g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC §14 et seq.);
- h. Dredge or fill permits under §404 of the CWA; and
- i. Other relevant environmental permits, including state permits.

7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area; and

8. A brief description of the nature of the business.

G. Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial mining, and silvicultural dischargers applying for VPDES permits, except for those facilities subject to the requirements of 9VAC25-31-100 H, shall provide the following information to the department, using application forms provided by the department.

- 1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of the receiving water.
- 2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subdivision 3 of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

3. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water run-off; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

4. If any of the discharges described in subdivision 3 of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for storm water run-off, spillage or leaks).

5. If an effluent guideline promulgated under §304 of the CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility.

6. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

7. a. Information on the discharge of pollutants specified in this subdivision (except information on storm water discharges which is to be provided as specified in 9VAC25-31-120). When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (2005). When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the board may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in e and f of this subdivision that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH,

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temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the board may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

b. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes (applicants submitting permit applications for storm water discharges under 9VAC25-31-120 C may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the board). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9VAC25-31-120 B 1. For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9VAC25-31-120 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The board may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the

form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 (2005), and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water run-off from the facility.)

c. Every applicant must report quantitative data for every outfall for the following pollutants:

Biochemical oxygen demand (BOD<sub>5</sub>)

Chemical oxygen demand

Total organic carbon

Total suspended solids

Ammonia (as N)

Temperature (both winter and summer)

pH

d. The board may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subdivision 7 c of this subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A (2005)) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D (2005) for the applicant's industrial category or categories unless the applicant qualifies as a small business under subdivision 8 of this subsection. Table II of 40 CFR Part 122 Appendix D (2005) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes; and

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2005) (the toxic metals, cyanide, and total phenols).

f. (1) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (2005) (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(2) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (2005) (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subdivision 7 e of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subdivision 8 of this subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (2005) (the organic toxic pollutants).

g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (2005) (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

h. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-

(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(2) Knows or has reason to believe that TCDD is or may be present in an effluent.

8. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in subdivision 7 e (1) or 7 f (1) of this subsection to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (2005) (the organic toxic pollutants):

a. For coal mines, a probable total annual production of less than 100,000 tons per year; or

b. For all other applicants, gross total annual sales averaging less than \$100,000 per year (in second quarter 1980 dollars).

9. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or by-product. The board may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the board has adequate information to issue the permit.

10. Reserved.

11. An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge.

12. If a contract laboratory or consulting firm performed any of the analyses required by subdivision 7 of this subsection, the identity of each laboratory or firm and the analyses performed.

13. In addition to the information reported on the application form, applicants shall provide to the board, at its request, such other information, including pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board, as the board may reasonably require to assess the discharges of the facility and to determine whether to issue a VPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

H. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only nonprocess wastewater. Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits which discharge only nonprocess wastewater not regulated by an effluent

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limitations guideline or new source performance standard shall provide the following information to the department using application forms provided by the department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;
2. Date of expected commencement of discharge;
3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;
4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the board. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136 (2005). Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.
  - (1) Biochemical oxygen demand (BOD<sub>5</sub>).
  - (2) Total suspended solids (TSS).
  - (3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).
  - (4) Total residual chlorine (if chlorine is used).
  - (5) Oil and grease.
  - (6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged).
  - (7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).
  - (8) Ammonia (as N).
  - (9) Discharge flow.
  - (10) pH.
  - (11) Temperature (winter and summer).
- b. The board may waive the testing and reporting requirements for any of the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits

a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

c. If the applicant is a new discharger, he must submit the information required in subdivision 4 a of this subsection by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not submit testing results which he has already performed and reported under the discharge monitoring requirements of his VPDES permit.

d. The requirements of subdivisions 4 a and 4 c of this subsection that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met;

5. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for storm water run-off, leaks, or spills);
6. A brief description of any treatment system used or to be used;
7. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 9VAC25-31-230 G;
8. Signature of certifying official under 9VAC25-31-110; and
9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

I. Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the department, using the application form provided by the department:

1. For concentrated animal feeding operations:
  - a. The name of the owner or operator;
  - b. The facility location and mailing address;
  - c. Latitude and longitude of the production area (entrance to the production area);
  - d. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of subdivision F 7 of this section;

e. Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

f. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

g. The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

h. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and

i. For CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of coverage.

2. For concentrated aquatic animal production facilities:

a. The maximum daily and average monthly flow from each outfall;

b. The number of ponds, raceways, and similar structures;

c. The name of the receiving water and the source of intake water;

d. For each species of aquatic animals, the total yearly and maximum harvestable weight;

e. The calendar month of maximum feeding and the total mass of food fed during that month; and

f. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

J. Application requirements for new and existing POTWs and treatment works treating domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by the board must provide to the department, at a minimum, the information in this subsection using an application form provided by the department. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver

request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action but does provide notice to the board and permit applicant(s) that the EPA may object to any board-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:

a. Name, mailing address, and location of the facility for which the application is submitted;

b. Name, mailing address, and telephone number of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;

c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

(1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;

(2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);

(3) NPDES program under the Clean Water Act (CWA);

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(5) Nonattainment program under the Clean Air Act;

(6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(8) Dredge or fill permits under §404 of the CWA; and

(9) Other relevant environmental permits, including state permits;

d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

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g. Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

h. The following information for outfalls to surface waters and other discharge or disposal methods:

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, and VPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):

(a) A description of the disposal method, including the location and size of each disposal site, if applicable;

(b) The annual average daily volume disposed of by this method, in gallons per day; and

(c) Whether disposal through this method is continuous or intermittent;

2. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

a. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

b. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(1) Treatment plant area and unit processes;

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(3) Each well where fluids from the treatment plant are injected underground;

(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;

(5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

(6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

c. Process flow diagram or schematic.

(1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

(1) The outfall number of each outfall affected;

(2) A narrative description of each required improvement;

(3) Scheduled or actual dates of completion for the following:

(a) Commencement of construction;

(b) Completion of construction;

(c) Commencement of discharge; and

(d) Attainment of operational level; and

(4) A description of permits and clearances concerning other federal or state requirements;

3. Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

- a. The following information about each outfall:
  - (1) Outfall number;
  - (2) State, county, and city or town in which outfall is located;
  - (3) Latitude and longitude, to the nearest second;
  - (4) Distance from shore and depth below surface;
  - (5) Average daily flow rate, in million gallons per day;
  - (6) The following information for each outfall with a seasonal or periodic discharge:
    - (a) Number of times per year the discharge occurs;
    - (b) Duration of each discharge;
    - (c) Flow of each discharge; and
    - (d) Months in which discharge occurs; and
  - (7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used.
- b. The following information, if known, for each outfall through which effluent is discharged to surface waters:
  - (1) Name of receiving water;
  - (2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;
  - (3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and
  - (4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable).
- c. The following information describing the treatment provided for discharges from each outfall to surface waters:
  - (1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:
    - (a) Design biochemical oxygen demand (BOD<sub>5</sub> or CBOD<sub>5</sub>) removal (percent);
    - (b) Design suspended solids (SS) removal (percent); and, where applicable,
    - (c) Design phosphorus (P) removal (percent);
    - (d) Design nitrogen (N) removal (percent); and

(e) Any other removals that an advanced treatment system is designed to achieve.

(2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).

4. Effluent monitoring for specific parameters.

a. As provided in subdivisions 4 b through j of this subsection, all applicants must submit to the department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The board may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

b. All applicants must sample and analyze for the following pollutants:

- (1) Biochemical oxygen demand (BOD<sub>5</sub> or CBOD<sub>5</sub>);
- (2) Fecal coliform;
- (3) Design flow rate;
- (4) pH;
- (5) Temperature; and
- (6) Total suspended solids.

c. All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the following pollutants:

- (1) Ammonia (as N);
- (2) Chlorine (total residual, TRC);
- (3) Dissolved oxygen;
- (4) Nitrate/Nitrite;
- (5) Kjeldahl nitrogen;
- (6) Oil and grease;
- (7) Phosphorus; and
- (8) Total dissolved solids.

Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine.

d. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as

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required by the board must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J (2005), and for any other pollutants for which the board or EPA have established water quality standards applicable to the receiving waters.

e. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

f. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The board may require additional samples, as appropriate, on a case-by-case basis.

g. All existing data for pollutants specified in subdivisions 4 b through e of this subsection that is collected within 4-1/2 years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

h. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 (2005) unless an alternative is specified in the existing VPDES permit. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

i. The effluent monitoring data provided must include at least the following information for each parameter:

- (1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;
- (2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;
- (3) The analytical method used; and
- (4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

j. Unless otherwise required by the board, metals must be reported as total recoverable.

## 5. Effluent monitoring for whole effluent toxicity.

a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the 4-1/2

years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(1) All POTWs with design flow rates greater than or equal to one million gallons per day;

(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(3) Other POTWs, as required by the board, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(b) The ratio of effluent flow to receiving stream flow;

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, or a water designated as an outstanding natural resource water; or

(e) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the board determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the board may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide:

(1) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(2) Results from four tests performed at least annually in the 4-1/2 year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the board.

e. Applicants must conduct tests with multiple species (no less than two species, e.g., fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the range of receiving water dilution. The board recommends that applicants conduct acute or chronic testing based on the following dilutions: (i) acute toxicity testing if the dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii) chronic toxicity testing if the dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

f. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

g. Applicants must provide the results using the form provided by the department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to subdivision 5 b of this subsection for which such information has not been reported previously to the department.

h. Whole effluent toxicity testing conducted pursuant to subdivision 5 b of this subsection must be conducted using methods approved under 40 CFR Part 136 (2005), as directed by the board.

i. For whole effluent toxicity data submitted to the department within 4-1/2 years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each POTW required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past 4-1/2 years revealed toxicity.

6. Applicants must submit the following information about industrial discharges to the POTW:

a. Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and

b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined in 9VAC25-31-10, that discharges to the POTW:

- (1) Name and mailing address;
- (2) Description of all industrial processes that affect or contribute to the SIU's discharge;
- (3) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;

(4) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;

(5) Whether the SIU is subject to local limits;

(6) Whether the SIU is subject to categorical standards and, if so, under which category and subcategory; and

(7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past 4-1/2 years.

c. The information required in subdivisions 6 a and b of this subsection may be waived by the board for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in subdivisions 6 a and b of this subsection:

(1) An annual report submitted within one year of the application; or

(2) A pretreatment program.

7. Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

a. If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261 (2005), the applicant must report the following:

(1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(2) The hazardous waste number and amount received annually of each hazardous waste.

b. If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and §3004(u) or 3008(h) of RCRA, the applicant must report the following:

(1) The identity and description of the site or facility at which the wastewater originates;

(2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261 (2005), if known; and

(3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

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c. Applicants are exempt from the requirements of subdivision 7 b of this subsection if they receive no more than 15 kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) (2005).

8. Each applicant with combined sewer systems must provide the following information:

a. The following information regarding the combined sewer system:

(1) A map indicating the location of the following:

(a) All CSO discharge points;

(b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(c) Waters supporting threatened and endangered species potentially affected by CSOs; and

(2) A diagram of the combined sewer collection system that includes the following information:

(a) The location of major sewer trunk lines, both combined and separate sanitary;

(b) The locations of points where separate sanitary sewers feed into the combined sewer system;

(c) In-line and off-line storage structures;

(d) The locations of flow-regulating devices; and

(e) The locations of pump stations.

b. The following information for each CSO discharge point covered by the permit application:

(1) The following information on each outfall:

(a) Outfall number;

(b) State, county, and city or town in which outfall is located;

(c) Latitude and longitude, to the nearest second;

(d) Distance from shore and depth below surface;

(e) Whether the applicant monitored any of the following in the past year for this CSO: (i) rainfall, (ii) CSO flow volume, (iii) CSO pollutant concentrations, (iv) receiving water quality, or (v) CSO frequency; and

(f) The number of storm events monitored in the past year;

(2) The following information about CSO overflows from each outfall:

(a) The number of events in the past year;

(b) The average duration per event, if available;

(c) The average volume per CSO event, if available; and

(d) The minimum rainfall that caused a CSO event, if available, in the last year;

(3) The following information about receiving waters:

(a) Name of receiving water;

(b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and

(c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code, if known; and

(4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable state water quality standard).

9. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.

10. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.

11. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

K. Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits (except for new discharges of facilities subject to the requirements of subsection H of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of 9VAC25-31-120 B 1 and this subsection) shall provide the following information to the department, using the application forms provided by the department:

1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;

2. The expected date of commencement of discharge;

3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

b. A line drawing of the water flow through the facility with a water balance as described in subdivision G 2;

c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and

maximum daily flow rate of each discharge occurrence (except for storm water run-off, spillage, or leaks); and

4. If a new source performance standard promulgated under §306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

5. The requirements in subdivisions H 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The board may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

- (1) Biochemical oxygen demand (BOD).
- (2) Chemical oxygen demand (COD).
- (3) Total organic carbon (TOC).
- (4) Total suspended solids (TSS).
- (5) Flow.
- (6) Ammonia (as N).
- (7) Temperature (winter and summer).
- (8) pH.

b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D (2005) (certain conventional and nonconventional pollutants).

c. Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2005) (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);

(2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (2005) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than \$100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);

(4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

(5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

(6) Hexachlorophene (HCP) (CAS #70-30-4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (2005) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than two years after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection G of this section. However, the applicant need not complete those portions of subsection G of this section requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

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7. Any optional information the permittee wishes to have considered;
8. Signature of certifying official under 9VAC25-31-110; and
9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

L. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA §301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to §301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to §301(g) of the CWA (provided however that a §301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the Administrator to be a pollutant covered by §301(b)(2)(F) of the CWA) and any other pollutant which the administrator lists under §301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall

number(s), the applicable effluent guideline, and whether the discharger is requesting a §301(c) or 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 (2005) have been met. Notwithstanding this provision, the complete application for a request under §301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under §302(b)(2) of the CWA of requirements under §302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

M. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under §301(h) of the CWA of requirements of §301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G (2005).

2. A modification under §302(b)(2) of the CWA of the requirements under §302(a) of the CWA for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

N. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections L and M of this section, the board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the board may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 (2005) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions L 2 a (2) or L 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

O. Recordkeeping. Except for information required by subdivision C 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

P. Sewage sludge management. All TWTDS subject to subdivision C 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action, but does provide notice to the board and the permit applicant that the EPA may object to any board issued permit issued in the absence of the required information.

1. All applicants must submit the following information:
  - a. The name, mailing address, and location of the TWTDS for which the application is submitted;
  - b. Whether the facility is a Class I Sludge Management Facility;

- c. The design flow rate (in million gallons per day);
- d. The total population served;
- e. The TWTDS's status as federal, state, private, public, or other entity;
- f. The name, mailing address, and telephone number of the applicant; and
- g. Indication whether the applicant is the owner, operator, or both.

2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:

- a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);
- b. UIC program under the Safe Drinking Water Act (SDWA);
- c. NPDES program under the Clean Water Act (CWA);
- d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
- e. Nonattainment program under the Clean Air Act;
- f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
- g. Dredge or fill permits under §404 of the CWA;
- h. Other relevant environmental permits, including state or local permits.

3. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country.

4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

- a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and
- b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.

5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the destination(s) of all liquids and solids leaving each such unit; and all processes

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used for pathogen reduction and vector attraction reduction.

6. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in Part VI (9VAC25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:

- a. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.
- b. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.
- c. Applicants must collect and analyze samples in accordance with analytical methods specified in 9VAC25-31-490 unless an alternative has been specified in an existing sewage sludge permit.
- d. The monitoring data provided must include at least the following information for each parameter:
  - (1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;
  - (2) The analytical method used; and
  - (3) The method detection level.

7. If the applicant is a person who prepares sewage sludge, as defined in 9VAC25-31-500, the applicant must provide the following information:

- a. If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility.
- b. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:
  - (1) The name, mailing address, and location of the other facility;
  - (2) The total dry metric tons per 365-day period received from the other facility; and
  - (3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.
- c. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

(1) Whether the Class A pathogen reduction requirements in 9VAC25-31-710 A or the Class B pathogen reduction requirements in 9VAC25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(2) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

d. If sewage sludge from the applicant's facility meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through 8, and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

e. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and

(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away.

f. If sewage sludge from the applicant's facility is provided to another person who prepares sewage sludge, as defined in 9VAC25-31-500, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information for each facility receiving the sewage sludge:

(1) The name and mailing address of the receiving facility;

(2) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9VAC25-31-530 G; and

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge.

8. If sewage sludge from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 7 d, e or f of this subsection, the applicant must provide the following information:

a. The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

b. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located.

c. The following information for each land application site that has been identified at the time of permit application:

(1) The name (if any), and location for the land application site;

(2) The site's latitude and longitude to the nearest second, and method of determination;

(3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;

(4) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9VAC25-31-500;

(7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(8) Whether either of the vector attraction reduction options of 9VAC25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

(9) Other information that describes how the site will be managed, as specified by the board.

d. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the site:

(1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 9VAC25-31-540 B 2 will be applied, to ascertain whether bulk sewage sludge subject to 9VAC25-31-540 B 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 8 d (1) of this subsection, bulk sewage sludge subject to cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993.

e. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

(1) Describes the geographical area covered by the plan;

(2) Identifies the site selection criteria;

(3) Describes how the site(s) will be managed;

(4) Provides for advance notice to the board of specific land application sites and reasonable time for the board to object prior to land application of the sewage sludge and to notify persons residing on property bordering such sites for the purpose of receiving written comments from those persons for a period not to exceed 30 days. The department shall, based upon these comments, determine whether additional site-specific requirements should be included in the authorization for land application at the site; and

(5) Provides for advance public notice of land application sites in a newspaper of general circulation in the area of the land application site.

A request to increase the acreage authorized by the permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings.

9. An applicant for a permit authorizing the land application of sewage sludge shall provide to the department, and to each locality in which the applicant proposes to land apply sewage sludge, written evidence of financial responsibility, including both current liability and pollution insurance, or such other evidence of financial responsibility as the board may establish by regulation in an amount not less than \$1 million per occurrence, which shall be available to pay claims for cleanup costs, personal injury, bodily injury and property damage resulting from the transport, storage and land application of sewage

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sludge in Virginia. The aggregate amount of financial liability to be maintained by the applicant shall be \$1 million for companies with less than \$5 million in annual gross revenue and shall be \$2 million for companies with \$5 million or more in annual gross revenue.

~~9.~~ 10. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.

b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

(1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and

(2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.

c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(1) The name or number and the location of the active sewage sludge unit;

(2) The unit's latitude and longitude to the nearest second, and method of determination;

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of  $1 \times 10^{-7}$  cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, and mailing address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any groundwater monitoring occurring at the active sewage sludge unit:

(a) A description of any groundwater monitoring occurring at the active sewage sludge unit;

(b) Any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;

(c) A copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

~~10.~~ 11. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.

b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.

~~11.~~ 12. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

- a. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;
- b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;
- c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and
- d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Virginia Solid Waste Management Regulations, 9VAC20-80.

~~12.~~ 13. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal.

~~13.~~ 14. At the request of the board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9VAC25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

~~14.~~ 15. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.

Q. Applications for facilities with cooling water intake structures.

1. Application requirements.

- a. New facilities with new or modified cooling water intake structures. New facilities with cooling water intake structures as defined in 9VAC25-31-165 must report the information required under subdivisions 2, 3, and 4 of this subsection and under 9VAC25-31-165. Requests for alternative requirements under 9VAC25-31-165 must be submitted with the permit application.
- b. Phase II existing facilities. Phase II existing facilities as defined in 9VAC25-31-165 must submit to the board for review the information required under subdivisions 2, 3, and 5 of this subsection and all applicable provisions of 9VAC25-31-165 as part of their application except for

the proposal for information collection, which must be provided in accordance with 9VAC25-31-165 C 3 b (1).

2. Source water physical data. These include:

- a. A narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including area dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located;
- b. Identification and characterization of the source water body's hydrological and geomorphologic features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies; and
- c. Location maps.

3. Cooling water intake structure data. These include:

- a. A narrative description of the configuration of each cooling water intake structure and where it is located in the water body and in the water column;
- b. Latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure;
- c. A narrative description of the operation of each cooling water intake structure, including design intake flow, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;
- d. A flow distribution and water balance diagram that includes all sources of water to the facility, recirculation flows and discharges; and
- e. Engineering drawings of the cooling water intake structure.

4. Source water baseline biological characterization data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The department may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan as required in 9VAC25-31-165 should be revised. This supporting information must include existing data if available. Existing data may be supplemented with data from newly conducted field studies. The information must include:

- a. A list of the data in subdivisions 4 b through 4 f of this subsection that is not available and efforts made to identify sources of the data;
- b. A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;

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c. Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;

d. Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

e. Data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;

f. Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;

g. Documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and

h. If information requested in subdivision 4 of this subsection is supplemented with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

5. Cooling water system data. Phase II existing facilities as defined in 9VAC25-31-165 must provide the following information for each cooling water intake structure they use:

a. A narrative description of the operation of the cooling water system, its relationship to cooling water intake structures, the proportion of the design intake flow that is used in the system, the number of days of the year the cooling water system is in operation and seasonal changes in the operation of the system, if applicable; and

b. Design and engineering calculations prepared by a qualified professional and supporting data to support the description required by subdivision 5 a of this subsection.

Note 1: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of the VPDES

application Form 2C are suspended as they apply to coal mines.

Note 2: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

a. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410 (2005)), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

b. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440 (2005)), and testing and reporting for all four fractions in all other subcategories of this industrial category.

c. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

Note 3: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

a. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454 (2005)), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

b. Testing and reporting for the pesticide fraction in the leather tanning and finishing, paint and ink formulation, and photographic supplies industrial categories.

c. Testing and reporting for the acid, base/neutral and pesticide fractions in the petroleum refining industrial category.

d. Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430 (2005)); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K),

Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

e. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

**9VAC25-31-220. Establishing limitations, standards, and other permit conditions.**

In addition to the conditions established under 9VAC25-31-210 A, each VPDES permit shall include conditions meeting the following requirements when applicable.

A. 1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under §301 of the CWA, on new source performance standards promulgated under §306 of CWA, on case-by-case effluent limitations determined under §402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 9VAC25-31-180 B (protection period).

2. The board may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a VPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N (2005) if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards.

1. Other effluent limitations and standards under §§301, 302, 303, 307, 318 and 405 of the CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard

or prohibition) is promulgated under §307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the board shall institute proceedings under this chapter to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

2. Standards for sewage sludge use or disposal under §405(d) of the CWA and Part VI (9VAC25-31-420 et seq.) of this chapter unless those standards have been included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act (42 USC §6901 et seq.), Part C of Safe Drinking Water Act (42 USC §300f et seq.), the Marine Protection, Research, and Sanctuaries Act of 1972 (33 USC §1401 et seq.), or the Clean Air Act (42 USC §4701 et seq.), or in another permit issued by the Department of Environmental Quality, ~~the Virginia Department of Health~~ or any other appropriate state agency under another permit program approved by the administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under §405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the board may initiate proceedings under this chapter to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

3. Requirements applicable to cooling water intake structures at new facilities under §316 (b) of the CWA, in accordance with 9VAC25-31-165.

C. Reopener clause. For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the board shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under §405(d) of the CWA. The board may promptly modify or revoke and reissue any permit containing the reopener clause required by this subdivision if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

D. Water quality standards and state requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under §§301, 304, 306, 307, 318 and 405 of the CWA necessary to:

1. Achieve water quality standards established under the law and §303 of the CWA, including state narrative criteria for water quality.

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a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the board determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.

b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the board shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

c. When the board determines, using the procedures in subdivision 1 b of this subsection, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a Virginia water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

d. Except as provided in this subdivision, when the board determines, using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the board demonstrates in the fact sheet or statement of basis of the VPDES permit, using the procedures in subdivision 1 b of this subsection, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.

e. Where Virginia has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable Virginia water quality standard, the board must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the board demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a

proposed Virginia criterion, or an explicit policy or regulation interpreting Virginia's narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents;

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under §307(a) of the CWA, supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by 9VAC25-31-280 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The permit contains a reopener clause allowing the board to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

f. When developing water quality-based effluent limits under this subdivision the board shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR 130.7 (2005);

2. Attain or maintain a specified water quality through water quality related effluent limits established under the law and §302 of the CWA;

3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the law and §401 of the CWA;

4. Conform to applicable water quality requirements under §401(a)(2) of the CWA when the discharge affects a state other than Virginia;

5. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under the law or regulations in accordance with §301(b)(1)(C) of the CWA;

6. Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under §208(b) of the CWA;

7. Incorporate §403(c) criteria under 40 CFR Part 125, Subpart M (2005), for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 the CFR Part 125, Subpart D (2005).

E. Technology-based controls for toxic pollutants. Limitations established under subsections A, B, or D of this section, to control pollutants meeting the criteria listed in subdivision 1 of this subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An explanation of the development of these limitations shall be included in the fact sheet.

1. Limitations must control all toxic pollutants which the board determines (based on information reported in a permit application or in a notification required by the permit or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee; or

2. The requirement that the limitations control the pollutants meeting the criteria of subdivision 1 of this subsection will be satisfied by:

a. Limitations on those pollutants; or

b. Limitations on other pollutants which, in the judgment of the board, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the law and 40 CFR Part 125, Subpart A (2005).

F. A notification level which exceeds the notification level of 9VAC25-31-200 A 1 a, b, or c, upon a petition from the permittee or on the board's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

G. Twenty-four-hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under 9VAC25-31-190 L 7 b (3) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant

specifically identified as the method to control a toxic pollutant or hazardous substance.

H. Durations for permits, as set forth in 9VAC25-31-240.

I. Monitoring requirements. The following monitoring requirements:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

2. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 9VAC25-31-190 and in subdivisions 5 through 8 of this subsection. Reporting shall be no less frequent than specified in the above regulation;

4. To assure compliance with permit limitations, requirements to monitor:

a. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

b. The volume of effluent discharged from each outfall;

c. Other measurements as appropriate including pollutants in internal waste streams; pollutants in intake water for net limitations; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; and pollutants in sewage sludge or other monitoring as specified in Part VI (9VAC25-31-420 et seq.) of this chapter; or as determined to be necessary on a case-by-case basis pursuant to the law and §405(d)(4) of the CWA; and

d. According to test procedures approved under 40 CFR Part 136 (2005) for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the permit for pollutants with no approved methods;

5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in Part VI (9VAC25-31-420 et seq.) of this

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chapter (where applicable), but in no case less than once a year;

6. Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;

7. Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in subdivision 6 of this subsection) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loading identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

c. Such report and certification be signed in accordance with 9VAC25-31-110; and

d. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements; and

8. Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under 9VAC25-31-190 L 1, 4, 5, 6, and 7 at least annually.

J. Pretreatment program for POTWs. Requirements for POTWs to:

1. Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under §307(b) of the CWA and Part VII (9VAC25-31-730 et seq.) of this chapter;

2. Submit a local program when required by and in accordance with Part VII of this chapter to assure compliance with pretreatment standards to the extent

applicable under §307(b) of the CWA. The local program shall be incorporated into the permit as described in Part VII of this chapter. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of Part VII of this chapter;

3. Provide a written technical evaluation of the need to revise local limits under Part VII of this chapter following permit issuance or reissuance; and

4. For POTWs which are sludge-only facilities, a requirement to develop a pretreatment program under Part VII of this chapter when the board determines that a pretreatment program is necessary to assure compliance with Part VI of this chapter.

K. Best management practices to control or abate the discharge of pollutants when:

1. Authorized under §304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

2. Authorized under §402(p) of the CWA for the control of storm water discharges;

3. Numeric effluent limitations are infeasible; or

4. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the law and the CWA.

L. Reissued permits.

1. In the case of effluent limitations established on the basis of §402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under §304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of §§301(b)(1)(C) or 303(d) or (e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with §303(d)(4) of the CWA.

2. Exceptions. A permit with respect to which subdivision 1 of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

b. (1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would

have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The board determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under §402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

d. The permittee has received a permit modification under the law and §§301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subdivision 2 b of this subsection shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the law or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a permit with respect to which subdivision 2 of this subsection applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a Virginia water quality standard applicable to such waters.

M. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the board may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The board's decision to issue a permit with no conditions applicable to

any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

N. Any conditions imposed in grants made by the board to POTWs under §§201 and 204 of the CWA which are reasonably necessary for the achievement of effluent limitations under §301 of the CWA and the law.

O. Requirements governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use regulated by Part VI of this chapter.

P. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

Q. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-31-330.

**9VAC25-31-290. Public notice of permit actions and public comment period.**

A. Scope.

1. The board shall give public notice that the following actions have occurred:

- a. A draft permit has been prepared under 9VAC25-31-260 D;
- b. A public hearing has been scheduled under 9VAC25-31-310; or
- c. A VPDES new source determination has been made under 9VAC25-31-180.

2. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under 9VAC25-31-370 B. Written notice of that denial shall be given to the requester and to the permittee. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

3. Public notices may describe more than one permit or permit actions.

B. Timing.

1. Public notice of the preparation of a draft permit required under subsection A of this section shall allow at least 30 days for public comment.

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2. Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

C. Methods. Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:

1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subdivision may waive his or her rights to receive notice for any classes and categories of permits):

a. The applicant (except for VPDES general permits when there is no applicant);

b. Any other agency which the board knows has issued or is required to issue a VPDES, sludge management permit;

c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);

d. Any state agency responsible for plan development under §208(b)(2), 208(b)(4) or §303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

e. Any user identified in the permit application of a privately owned treatment works;

f. Persons on a mailing list developed by:

(1) Including those who request in writing to be on the list;

(2) Soliciting persons for area lists from participants in past permit proceedings in that area; and

(3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as EPA regional and state funded newsletters, environmental bulletins, or state law journals. (The board may update the mailing list from time to time by requesting written indication of continued interest from those listed. The board may delete from the list the name of any person who fails to respond to such a request.);

g. (1) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(2) Each state agency having any authority under state law with respect to the construction or operation of such facility;

2. By publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. The cost of public notice shall be paid by the owner; and

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

a. Name and address of the office processing the permit action for which notice is being given;

b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of VPDES draft general permits;

c. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for VPDES general permits when there is no application;

d. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application;

e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

f. A general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice or practices and the location of each sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area;

g. Requirements applicable to cooling water intake structures under §316 of the CWA, in accordance with 9VAC25-31-165; and

h. Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under 9VAC25-31-310 shall contain the following information:

- a. Reference to the date of previous public notices relating to the permit;
- b. Date, time, and place of the public hearing;
- c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and
- d. A concise statement of the issues raised by the persons requesting the public hearing.

3. Public notice of a VPDES draft permit for a discharge where a request for alternate thermal effluent limitations has been filed shall include:

- a. A statement that the thermal component of the discharge is subject to effluent limitations incorporated in 9VAC25-31-30 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under §301 or §306 of the CWA;
- b. A statement that an alternate thermal effluent limitation request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the law and §316(a) of the CWA and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and
- c. If the applicant has filed an early screening request for a CWA §316(a) variance, a statement that the applicant has submitted such a plan.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a, b, c, and d of this section shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any).

F. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the board shall ~~notify~~:

1. Notify, in writing, the locality wherein the discharge or, as applicable, the associated land application of sewage sludge, or land disposal of treated sewage, stabilized sewage sludge or stabilized septage does or is proposed to take place of, at a minimum:

- ~~1- a.~~ a. The name of the applicant;
- ~~2- b.~~ b. The nature of the application and proposed discharge;
- ~~3- c.~~ c. The availability and timing of any comment period; and
- ~~4- d.~~ d. Upon request, any other information known to, or in the possession of, the board or the department regarding

the applicant not required to be held confidential by this chapter.

2. Establish a date for a public meeting to discuss technical issues relating to proposals for land application of sewage sludge, or land disposal of treated sewage, stabilized sewage sludge or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The board shall not consider the application for the proposal to be complete until the public meeting has been held and comment has been received from the local governing body, or until 30 days have lapsed from the date of the public meeting.

~~The board shall~~ 3. Except for land application of sewage sludge or land disposal of treated sewage, stabilized sewage sludge or stabilized septage, make a good faith effort to provide this same notice and information to (i) each locality and riparian property owner to a distance one-quarter mile downstream and one-quarter mile upstream or to the fall line whichever is closer on tidal waters and (ii) each locality and riparian property owner to a distance one-half mile downstream on nontidal waters. Distances shall be measured from the point, or proposed point, of discharge. If the receiving river at the point or proposed point of discharge is two miles wide or greater, the riparian property owners on the opposite shore need not be notified. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the commissioners of the revenue or the tax assessor's office of the affected jurisdictions upon request by the board.

4. For a site that is to be added to an existing permit authorizing land application of sewage sludge, notify persons residing on property bordering such site and receive written comments from those persons for a period not to exceed 30 days. Based upon the written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application at the site.

G. Before issuing any permit, if the board finds that there are localities particularly affected by the permit, the board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific

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pollutants involved and the total quantity of each which may be discharged; and

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the board for at least 15 days after any public hearing on the permit, unless the board votes to shorten the period. For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material water quality impact which would not be experienced by other localities.

## **9VAC25-31-460. Additional or more stringent requirements.**

A. On a case-by-case basis, the board may impose requirements for the use or disposal of sewage sludge in addition to or more stringent than the requirements in this part when necessary to protect public health and the environment from any adverse effect of a pollutant in the sewage sludge.

B. Nothing in this part precludes another state agency with responsibility for regulating sewage sludge or any political subdivision of Virginia or an interstate agency from imposing requirements for the use or disposal of sewage sludge more stringent than the requirements in this part or from imposing additional requirements for the use or disposal of sewage sludge.

C. For sewage sludge land application where, because of site-specific conditions, including soil type, identified during the permit application review process, the department determines that special requirements are necessary to protect the environment or the health, safety or welfare of persons residing in the vicinity of a proposed land application site, the department may incorporate in the permit at the time it is issued reasonable special conditions regarding buffering, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by this regulation. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

## **9VAC25-31-475. Local enforcement of sewage sludge regulations.**

A. In the event of a dispute between a locality that has adopted a local ordinance for testing and monitoring the land application of sewage sludge and a permittee concerning the existence of a violation, the activity alleged to be in violation shall be halted pending a determination by the director. The decision of the director shall be final and binding unless reversed on judicial appeal pursuant to §2.2-4026 of the Code of Virginia. If the activity is not halted, the director may seek an injunction compelling the halting of the activity from a court having jurisdiction.

B. Upon determination by the director that there has been a violation of §62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia, or of any regulation promulgated under those sections, and that such violation poses an imminent threat to public health, safety or welfare, the department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation.

C. Local governments shall promptly notify the department of all results from the testing and monitoring of the land application of sewage sludge performed by persons employed by local governments and any violation of §62.1-44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3 of the Code of Virginia.

D. Localities receiving complaints concerning land application of sewage sludge shall notify the department and the permit holder.

## **9VAC25-31-485. Requirements for permittees who land apply sewage sludge.**

A. Any person who land applies sewage sludge authorized by a VPDES permit shall be certified in accordance with requirements specified in the Virginia Pollution Abatement Permit Regulation (9VAC25-32).

B. Persons authorized to land apply sewage sludge under a VPDES permit shall report all complaints received by them to the department and the local governing body of the jurisdiction in which the complaint originates.

C. At least 100 days prior to commencing land application of sewage sludge at a permitted site the permittee shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site. This requirement may be satisfied by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

D. The permittee shall deliver or cause to be delivered written notification to the department as least 14 days prior to commencing land application of sewage sludge at a permitted site. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.

E. The permittee shall provide to the department, and to each locality in which it is permitted to land apply sewage sludge, written evidence of financial responsibility, including both current liability and pollution insurance, or such other evidence of financial responsibility as the board may establish by regulation in an amount not less than \$1 million per occurrence, which shall be available to pay claims for cleanup

costs, personal injury, bodily injury and property damage resulting from the transport, storage and land application of sewage sludge in Virginia. The aggregate amount of financial liability maintained by the permittee shall be \$1 million for companies with less than \$5 million in annual gross revenue and shall be \$2 million for companies with \$5 million or more in annual gross revenue.

**9VAC25-31-505. Universal requirements for land application operations.**

A. A nutrient management plan prepared by a person who is certified as a nutrient management planner by the Department of Conservation and Recreation shall be developed for all application sites prior to sewage sludge land application. A nutrient management plan approved by the Department of Conservation and Recreation shall be required for application sites prior to board authorization under specific conditions, including but not limited to sites operated by an owner or lessee of a confined animal feeding operation, as defined in subsection A of §62.1-44.17.1 of the Code of Virginia, or confined poultry feeding operation, as defined in subsection A of §62.1-44.17.1.1 of the Code of Virginia; sites where land application more frequently than once every three years at greater than 50% of the annual agronomic rate is proposed; and other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters.

B. Sewage sludge shall be treated to meet standards for land application as required by Part VI (9VAC25-31-420 et seq.) of this chapter prior to delivery at the land application site. No person shall alter the composition of sewage sludge at a site approved for land application of sewage sludge under a Virginia Pollution Abatement Permit. Any person who engages in the alteration of such sewage sludge shall be subject to the penalties provided in Article 6 (§62.1-44.31 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. The addition of lime or deodorants to sewage sludge that have been treated to meet standards for land application as required by Part VI (9VAC25-31-420 et seq.) of this chapter, shall not constitute alteration of the composition of sewage sludge. The board may authorize public institutions of higher education to conduct scientific research on the composition of sewage sludge that may be applied to land.

C. Surface incorporation may be required on cropland by the department, or the local monitor with approval of the department, to mitigate excessive odors, when incorporation is practicable and compatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

D. For applications where surface applied sewage sludge are not incorporated, the department (or the local monitor with approval of the department) may require as a site-specific

permit condition, extended buffer zone setback distances when necessary to protect odor sensitive receptors. When necessary, buffer zone setback distances from odor sensitive receptors may be extended to 400 feet or more and no sewage sludge shall be applied within such extended buffer zones. The board, in accordance with 9VAC25-31-460, may impose standards and requirements that are more stringent when required to protect public health and the environment, or prevent nuisance conditions from developing, either prior to or during sewage sludge use operations.

E. No person shall apply to the Department of Environmental Quality for a permit, a variance, or a permit modification authorizing storage of sewage sludge without first complying with all requirements adopted pursuant to §62.1-44.19:3 R of the Code of Virginia.

**9VAC25-32-40. Exclusions.**

The following do not require a VPA permit:

1. The introduction of sewage, industrial waste or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with VPA permits until all discharges of pollutants to state waters are eliminated;
2. Any introduction of pollutants from nonpoint source agricultural or silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to concentrated confined animal feeding operations;
3. Return flows from irrigated agricultural land;
4. Land disposal activity, including sewage sludge use or disposal or onsite waste treatment, when this activity is ~~authorized by a state Department of Health permit or~~ otherwise authorized by the Department of Environmental Quality; and
5. Discharges authorized by EPA under the Safe Drinking Water Act Underground Injection Control Program (UIC), 40 CFR Part 144, and approved, in writing, by the board.

**9VAC25-32-60. Application for a VPA permit.**

A. Duty to apply. Any owner of a pollutant management activity who does not have an effective VPA permit, except persons covered by general VPA permits or excluded under 9VAC25-32-40, shall submit a complete application to the department in accordance with this section.

- a. A complete VPA permit application shall be submitted by the owner of the pollutant management activity before a VPA permit can be issued. This item does not apply where general VPA permits are applicable.
- b. The board may require the submission of additional information after an application has been filed, and may

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suspend processing of any application until such time as the owner has supplied missing or deficient information and the board considers the application complete. Further, when the owner becomes aware that he omitted one or more relevant facts from a VPA permit application, or submitted incorrect information in a VPA permit application or in any report to the department, he shall promptly submit such facts or the correct information.

c. In accordance with §62.1-44-19:3 A of the Code of Virginia, no application for a permit or variance to authorize the storage of sewage sludge shall be complete unless it contains certification from the governing body of the locality in which the sewage sludge is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

d. No application for a permit to land apply biosolids in accordance with Part IX (9VAC25-32-310 et seq.) of this chapter shall be complete unless it includes the written consent of the landowner to apply biosolids on his property.

2. a. Any owner proposing a new pollutant management activity shall submit an application for a VPA permit 180 days prior to the date planned for commencing erection, construction or expansion or employment of new processes at any site. There shall be no operation of said facilities prior to the issuance of a VPA permit.

b. Any owner with an existing pollutant management activity that has not been permitted shall submit an application within 60 days upon being requested to by the board. The board, after determining there is pollution occurring, may allow the construction of treatment works prior to permit issuance. There shall be no operation of said treatment works prior to permit issuance.

c. Owners currently managing pollutants who have effective VPA permits shall submit a new application 180 days prior to proposed facility expansions, production increases, or process modification which will:

(1) Result in significantly new or substantially increased amounts of pollutants being managed or a significant change in the nature of the pollutant management activity that was not anticipated and accounted for on the application for the effective VPA permit; or

(2) Violate or lead to violation of the terms and conditions of the effective VPA permit.

3. Pursuant to §62.1-44.15:3 of the Code of Virginia, no application for a VPA permit from a privately owned treatment works serving, or designed to serve, 50 or more

residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

B. Duty to reapply. Any permittee with an effective VPA permit shall submit a new application at least 180 days before the expiration date of the effective VPA permit unless permission for a later date has been granted by the board. Permission shall not be granted to submit an application later than the expiration date of the existing VPA permit.

C. Information requirements. All applicants for VPA permits shall provide information in accordance with forms provided by the department.

## **9VAC25-32-80. Conditions applicable to all VPA permits.**

A. Duty to comply. The permittee shall comply with all conditions of the VPA permit. Any permit noncompliance is a violation of the law, and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit renewal application.

B. Duty to halt or reduce activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the VPA permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to minimize, correct or prevent any pollutant management activity in violation of the VPA permit which has a reasonable likelihood of adversely affecting human health or the environment.

D. Proper operation and maintenance. The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with permit conditions. Proper operation and maintenance includes effective plant performance, adequate funding, adequate licensed operator staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures.

E. Permit action.

1. A VPA permit may be modified, revoked and reissued, or terminated as set forth in this chapter.

2. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VPA permit.

3. VPA permits may be modified, revoked and reissued or terminated upon the request of the permittee or interested

persons, or upon the board's initiative, to reflect the requirements of any changes in the statutes or regulations.

4. VPA permits continued under 9VAC25-32-130 remain effective and enforceable.

F. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to records required by the VPA permit;
2. Have access to, inspect and copy any records that must be kept as part of VPA permit conditions;
3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the VPA permit; and
4. Sample or monitor any substances or parameters at any locations for the purpose of assuring VPA permit compliance or as otherwise authorized by law.

G. Duty to provide information.

1. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, terminating the VPA permit, or to determine compliance with the VPA permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as requested by the board prior to commencing construction.

H. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the VPA permit, and records of all data used to complete the application for the VPA permit, for a period of at least three years or in the case of activities regulated under Part IX (9VAC25-32-310 et seq.) of this chapter, at least five years from the date of the sample, measurement, report or application. This period may be extended by request of the board at any time.

Records related to biosolids data and information specified in agreements between generator, owner, agents, landowners and farmers shall be described and maintained for a minimum period of five years or the duration of the permit or subsequent revisions if longer than five years.

3. Records of monitoring information shall include:

- a. The date, exact place and time of sampling or measurements;
- b. The name of the individual or individuals who performed the sampling or measurements;
- c. The date or dates analyses were performed;
- d. The name of the individual or individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used; and
- f. The results of such analyses.

4. Monitoring shall be conducted according to analytical methods promulgated pursuant to §304(h) of the Clean Water Act (33 USC §1251 et seq.) and listed in the Code of Federal Regulations at 40 CFR Part 136 (1995). Any other acceptable test procedure not listed in 40 CFR Part 136 (1995) shall be specified in the VPA permit.

I. Reporting requirements.

1. The permittee shall give prompt notice to the department of any planned changes to the design or operation of the pollutant management activity.
2. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the owner shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with subdivision 6 of this subsection. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:
  - a. Unusual spillage of materials resulting directly or indirectly from processing operations;
  - b. Breakdown of processing or accessory equipment;
  - c. Failure or taking out of service of some or all of the treatment works; and
  - d. Flooding or other acts of nature.
3. The permittee shall give at least 10 days advance notice to the department of any planned changes to the facility or activity which may result in noncompliance.
4. Monitoring results shall be reported at the intervals specified in the applicable VPA permit.

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a. Monitoring results shall be reported in a format acceptable to the board.

b. If a permittee monitors the pollutant management activity, at a sampling location specified in the VPA permit, for any pollutant more frequently than required by the VPA permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

c. If the permittee monitors the pollutant management activity, at a sampling location specified in the VPA permit, for any pollutant that is not required to be monitored by the VPA permit, and uses approved analytical methods the permittee shall report the results with the monitoring report.

d. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the VPA permit.

5. Reports of compliance or noncompliance with or any progress report on interim and final requirements contained in any compliance schedule in the VPA permit shall be submitted no later than 14 days following each scheduled date.

6. 24-hour reporting.

a. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health. An oral report must be provided as soon as possible, but in no case later than 24 hours from the time the permittee becomes aware of the circumstances. A written report shall be submitted within five days and shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and, if the noncompliance has not been corrected, how long it is expected to continue, steps planned or taken to reduce, eliminate and prevent a recurrence of the noncompliance. The board may waive the written report requirements on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported. All other noncompliance reports which may not adversely affect state waters shall be submitted with the monitoring report. Reports shall include overflows.

b. The following shall be included as information which must be reported within 24 hours under this subdivision:

(1) Any unanticipated bypass; and

(2) Any upset which causes a discharge to surface waters.

J. Bypass.

1. A bypass of the treatment works is prohibited except as provided herein.

2. If the permittee knows in advance of the need for a bypass, he shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects, the board may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage ("severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production); and

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in subdivision 2 of this subsection and in light of the information reasonably available to the owner at the time of the bypass.

K. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. That the 24-hour reporting requirements to the department were met; and

4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the VPA permit.

L. Signature requirements. All applications, reports, or information submitted to the department shall be signed and certified as required in 9VAC25-32-70.

M. Transfers. A VPA permit is not transferable to any person except after notice to the department according to 9VAC24-32-230. The board may require modification or revocation and reissuance of the VPA permit to change the name of the permittee and incorporate such other requirements as may be necessary.

**9VAC25-32-100. Establishing limitations and other VPA permit conditions.**

In addition to the conditions established in 9VAC25-32-80 and 9VAC25-32-90, each VPA permit shall include conditions meeting the following requirements where applicable.

1. Determination of limitations. VPA permit limitations and conditions shall be established based on the nature of the pollutant management activity in order to ensure compliance with technology-based limitations, water quality standards, the law and all regulations promulgated thereunder. These limitations and conditions may include, but are not limited to, duration of VPA permits, monitoring requirements, limitations to control toxic pollutants, best management practices and schedules of compliance.

2. Duration of VPA permits. VPA permits issued under this regulation shall have an effective date and an expiration date which will determine the life of the VPA permit. VPA permits shall be effective for a fixed term not to exceed 10 years as specified in the VPA permit. The term of the VPA permits shall not be extended by modification beyond the maximum duration. The VPA permit shall expire at the end of the term unless an application for a new VPA permit has been timely filed as required by this chapter and the board is unable, through no fault of the permittee, to issue a new VPA permit before the expiration date of the previous VPA permit.

3. Monitoring requirements.

a. All VPA permits may specify:

- (1) Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods;
- (2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring; and
- (3) Applicable reporting requirements based upon the impact of the regulated activity on water quality.

b. VPA permits may include requirements to report monitoring results with a frequency dependent on the nature and effect of the pollutant management activity.

c. In addition, the following monitoring requirements may be included in the VPA permits:

(1) Mass or other measurements specified in the VPA permit for each pollutant of concern;

(2) The volume of waste, wastewater or sludge managed by the activity; and

(3) Other measurements as appropriate.

4. Best Management Practices (BMPs). The VPA permit shall require the use of BMPs to control or abate pollutants where numeric limits are infeasible, and the VPA permit may include BMPs in addition to numeric limits where BMPs are necessary to achieve limitations and standards or to carry out the purpose and intent of the law.

5. Sludge disposal. The VPA permit shall include, where appropriate, specific requirements for disposal of all sludge.

6. Sewage sludge land application. Where, because of site-specific conditions, including soil type, identified during the permit application review process, the department determines that special requirements are necessary to protect the environment or the health, safety or welfare of persons residing in the vicinity of a proposed land application site, the department may incorporate in the permit at the time it is issued reasonable special conditions regarding buffering, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by this regulation. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

~~6.~~ 7. Schedules of compliance. The VPA permit may specify a schedule, when appropriate, leading to compliance with the VPA permit as soon as possible. When schedules of compliance are applicable the following shall be incorporated:

a. Schedule or schedules of compliance shall require the permittee to take specific steps where necessary to achieve expeditious compliance with the VPA permit;

b. The schedule of compliance shall set forth interim time periods not more than one year apart for the submission of reports of progress toward completion of each requirement; and

c. Schedule or schedules of compliance may be modified by modification of the VPA permit for good cause beyond the control of the permittee (e.g., act of God, strike, flood, material shortage).

**9VAC25-32-140. Public notice of VPA permit action and public comment period.**

A. Every draft VPA permit shall be given public notice, paid for by the owner, by publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the pollutant management activity.

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B. Interested persons shall have a period of at least 30 days following the date of the initial newspaper public notice to submit written comments on the tentative decision and to request a public hearing.

C. The contents of the public notice of an application for a VPA permit shall include:

1. The name and address of the applicant. If the location of the pollutant management activity differs from the address of the applicant the notice shall also state the location of the pollutant management activity including storage and land application sites;
2. A brief description of the business or activity conducted at the facility;
3. A statement of the tentative determination to issue or deny a VPA permit;
4. A brief description of the final determination procedure;
5. The address and phone number of a specific person at the state office from whom further information may be obtained; and
6. A brief description of how to submit comments and request a hearing.

D. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

E. Upon receipt of an application for a permit or for a modification of a permit, the board shall ~~cause~~:

1. ~~Cause~~ to be notified, in writing, the locality wherein the pollutant management activity does or is proposed to take place. This notification shall, at a minimum, include:

- ~~1- a.~~ The name of the applicant;
- ~~2- b.~~ The nature of the application and proposed pollutant management activity; and
- ~~3- c.~~ Upon request, any other information known to, or in the possession of, the board or the department regarding the application except as restricted by 9VAC25-32-150.

2. Establish a date for a public meeting to discuss technical issues relating to proposals for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The board shall not consider the application for the proposal to be complete until the public meeting has been held and comment has

been received from the local governing body or until 30 days have lapsed from the date of the public meeting.

F. Before issuing any permit, if the board finds that there are localities particularly affected by the permit, the board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged; and

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the board for at least 15 days after any public hearing on the permit, unless the board votes to shorten the period. For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material water quality impact which would not be experienced by other localities.

G. When a site is to be added to an existing permit authorizing land application of biosolids, the department shall notify persons residing on property bordering such site, and shall receive written comments from those persons for a period not to exceed 30 days. Based upon the written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application at the site.

## **9VAC25-32-210. Causes for termination.**

A. The following are causes for terminating a VPA permit during its term, or for denying a VPA permit renewal application, after public notice and opportunity for a public hearing:

1. The permittee has violated any regulation or order of the board, any condition of a VPA permit, any provision of the law, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;

2. The permittee's failure to disclose fully all relevant material facts, or the permittee's misrepresentation of any relevant material facts in applying for a VPA permit, or in any other report or document required under the law or this chapter;

3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by VPA permit modification or termination; or

4. There exists a material change in the basis on which the VPA permit was issued that requires either a temporary or a permanent reduction or elimination of any pollutant management activity controlled by the VPA permit necessary to protect human health or the environment.

B. In addition to causes for terminating a VPA permit specified in subsection A of this section, causes for terminating a VPA permit issued for land application, marketing and distribution of biosolids shall include:

1. Failure to comply with the conditions of the permit.
2. Violation of Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia or of any provisions of this regulation.
3. Change in ownership.
4. Abandonment of the facilities.

~~B.~~ C. A VPA permit may be terminated without public notice and opportunity for a hearing when the termination is mutually agreed to by the permittee and the board.

**9VAC25-32-220. Causes for modification.**

A VPA permit may be modified, but not revoked and reissued, except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility which require the application of VPA permit conditions that differ from those of the existing VPA permit or are absent from it;
2. When new information becomes available about the operation or pollutant management activity covered by the VPA permit which was not available at VPA permit issuance and would have justified the application of different VPA permit conditions at the time of VPA permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VPA permit was based; ~~or~~
4. When it becomes necessary to change final dates in compliance schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc.; or
5. For the addition of new land application sites, new biosolids sources or routine storage facilities to the permit.

**9VAC25-32-240. Minor modification.**

A. Upon request of the permittee, or upon board initiative with the consent of the permittee, minor modifications may

be made in the VPA permit without following the public involvement procedures.

B. Minor modification may only:

1. Correct typographical errors;
2. Require reporting by the permittee at a frequency other than that required in the VPA permit;
3. Change an interim compliance date in a schedule of compliance to no more than 120 days from the original compliance date and provided it will not interfere with the final compliance date;
4. Allow for a change in name, ownership or operational control when the board determines that no other change in the VPA permit is necessary, provided that a written agreement containing a specific date for transfer of VPA permit responsibility, coverage and liability from the current to the new permittee has been submitted to the department;
5. Delete the listing of a land application site when the pollutant management activity is terminated and does not result in an increase of pollutants which would exceed VPA permit limitations;
6. Reduce VPA permit limitations to reflect a reduction in the permitted activity when such reduction results from a shutdown of processes or pollutant generating activities or from connection of the permitted activity to a POTW;
7. Change plans and specifications where no other changes in the VPA permit are required;
8. Authorize treatment facility expansions, production increases or process modifications which will not cause a significant change in the quantity of pollutants being managed or a significant change in the nature of the pollutant management activity; or
9. Delete VPA permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated.

C. An application for a permit amendment to increase the acreage authorized by the permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings.

**9VAC25-32-300. Transition.**

A. Effective July 24, 1996, the following will occur:

1. All VPA applications received after that date will be processed in accordance with this regulation.
2. Any owner holding a No-Discharge Certificate will be notified of the deadline for applying for a VPA permit, unless this notification has already been made. All such notifications shall be completed by July 1, 1998. Upon

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notification that a VPA permit is necessary for the pollutant management activity authorized by the No-Discharge Certificate, the permittee shall have 180 days to apply for a VPA permit. If a VPA permit is required, the existing No-Discharge Certificate will remain in effect until the VPA permit is issued. Concurrent with the issuance of the VPA permit, the No-Discharge Certificate will be revoked subject to appropriate notice and opportunity for public hearing. Notwithstanding the foregoing, all No-Discharge Certificates which do not bear an expiration date shall terminate no later than July 1, 1999.

~~3. Existing VPA permits for sewage sludge use or disposal shall be terminated when the sewage sludge use or disposal is authorized by:~~

- ~~1. A permit issued by the Department of Health; or~~
- ~~2. A VPDES permit issued by the board.~~

B. Permits issued by the Department of Health under the authority of the State Board of Health prior to January 1, 2008, shall continue in force until expired, reissued, amended, or terminated in accordance with the permit or this regulation. All owners holding biosolids use construction or operation permits as of January 1, 2008, shall submit an application for a Virginia Pollution Abatement Permit in accordance with this regulation within 180 days before the date of expiration of permits issued prior to January 1, 2008, or at the time of any modification request submitted after January 1, 2008, or by June 1, 2008, whichever is later. All owners of biosolids use facilities shall comply with the applicable requirements set forth in the operational regulations of Part IX (9VAC25-32-310 et seq.) of this chapter.

## Part IX

### Biosolids Program

#### Article 1

##### Definitions and Procedures

#### **9VAC25-32-310. Definitions.**

A. For the purposes of this part the following definitions shall apply:

"Biosolids" means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains acceptable levels of pollutants, such that it is acceptable for use for land application, marketing or distribution in accordance with this regulation.

"Critical areas/waters" means areas/waters in proximity to shellfish waters, a public water supply, recreation or other waters where health or water quality concerns are identified by the board or the Department of Health.

"Dry tons" means dry weight established as representative of land applied biosolids and expressed in units of English tons.

"Dry weight" means the measured weight of a sample of sewage sludge or biosolids after all moisture has been removed in accordance with the standard methods of testing and often represented as a percent solids.

"Effluent limitations" means schedules of compliance, prohibitions, permit requirements, established under state or federal law for control of sewage discharges.

"Exceptional quality biosolids" means biosolids that have received an established level of treatment for pathogen control and vector attraction reduction and contain known levels of pollutants, such that they may be marketed or distributed for public use in accordance with this regulation.

"Facilities" means processes, equipment, storage devices and dedicated sites, located or operated separately from a treatment works, utilized for sewage sludge management, including but not limited to, handling, treatment, transport and storage of biosolids.

"Generator" means the owner of a sewage treatment works that produces sewage sludge and biosolids.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

"Land application" means the distribution of either treated wastewater of acceptable quality, referred to as effluent, or stabilized sewage sludge of acceptable quality, referred to as biosolids, upon, or insertion into, the land with a uniform application rate for the purpose of utilization, or assimilation. Bulk disposal of stabilized sludge in a confined area, such as in landfills, is not land application. Sites approved for land application of biosolids in accordance with this regulation are not to be considered to be treatment works.

"Land applicer" means someone who land applies biosolids pursuant to a valid permit from the department as set forth in this regulation.

"Local monitor" means a person or persons employed by local government to perform the duties of monitoring the operations of land applicers pursuant to a local ordinance.

"Local ordinance" means an ordinance adopted by counties, cities or towns in accordance with §62.1-44.19:3 of the Code of Virginia.

"Operate" means the act of any person who may have an impact on either the finished water quality at a waterworks or the final effluent at a sewage treatment works, such as to (i) place into or take out of service a unit process or unit processes, (ii) make or cause adjustments in the operation of a unit process or unit processes at a treatment works, or (iii) manage sewage sludge or biosolids.

"Owner" means the Commonwealth or any of its political subdivisions including sanitary districts, sanitation district commissions and authorities, federal agencies, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association that owns or proposes to own a sewerage system or treatment works as defined in §62.1-44.3 of the Code of Virginia.

"Permit" means an authorization granted by the board to construct, or operate, facilities and specific sites utilized for biosolids management, including land application, marketing and distribution of biosolids.

"Permittee" means a person, firm, corporation, political subdivision or other entity holding a permit approved by the board for the land application, storage or distribution of biosolids as provided for in this regulation.

"Pollutant" means any substance, radioactive material, or waste heat that causes or contributes to, or may cause or contribute to, pollution.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters or soil as will, or is likely to, create a nuisance or render such waters or soil (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable despite reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural or for other reasonable uses. Such alteration is also deemed to be pollution, if there occurs: (a) an alteration of the physical, chemical or biological property of state waters or soil, or a discharge or a deposit of sewage, industrial wastes or other wastes to state waters or soil by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of, or discharge, or deposit, to state waters or soil by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters or soil; or (c) the contravention of standards of air or water quality duly established by the State Water Control Board.

### **9VAC25-32-320. Local enforcement of the regulation.**

A. In the event of a dispute between a locality that has adopted a local ordinance for testing and monitoring the land application of sewage sludge and a permittee concerning the existence of a violation, the activity alleged to be in violation shall be halted pending a determination by the director. The decision of the director shall be final and binding unless reversed on judicial appeal pursuant to §2.2-4026 of the Code of Virginia. If the activity is not halted, the director may seek an injunction compelling the halting of the activity, from a court having jurisdiction.

B. Upon determination by the director that there has been a violation of §62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia, or of any regulation promulgated under those sections, and that such violation poses an imminent threat to public health, safety or welfare, the department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation.

C. Local governments shall promptly notify the department of all results from the testing and monitoring of the land application of sewage sludge performed by persons employed by local governments and any violation of §62.1-44.19:3, 62.1-44.19:3.1 or 62.1-44.19:3.3 of the Code of Virginia.

### **9VAC25-32-330. Variances.**

A. The board may grant a variance to a procedural, design, or operational regulation by following the appropriate procedures set forth in this section.

B. Requirements for a variance. The board may grant a variance if it finds that the hardship imposed (may be economic) outweighs the benefits that may be received by the public and that the granting of such variance does not subject the public to unreasonable health risks or environmental pollution.

C. Application for a variance. Any owner may apply in writing for a variance. The application should be sent to the appropriate regional office for evaluation. The application shall include:

1. A citation of the regulation from which a variance is requested.
2. The nature and duration of variance requested.
3. A statement of the hardship to the owner and the anticipated impacts to the public health and welfare if a variance were granted.
4. Suggested conditions that might be imposed on the granting of a variance that would limit its detrimental impact on public health and welfare.
5. Other information, if any, believed to be pertinent by the applicant.
6. Such other information as may be required to make the determination in accordance with subsection B of this section.

D. Consideration of a variance.

1. The board shall act on any variance request submitted pursuant to this subsection within 90 days of receipt of request.
2. In the board's consideration of whether a biosolids use variance should be granted, the board shall consider such factors as the following:

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a. The effect that such a variance would have on the adequate operation of the biosolids use facility, including public nuisance concerns;

b. The cost and other economic considerations imposed by this requirement; and

c. The effect that such a variance would have on the protection of the public health or the environment.

## E. Disposition of a variance request.

1. The board may grant the variance request and if the board proposes to deny the variance it shall provide the owner an opportunity to an informal hearing as provided in §2.2-4019 of the Code of Virginia. Following this opportunity for an informal hearing the board may reject any application for a variance by sending a rejection notice to the applicant. The rejection notice shall be in writing and shall state the reasons for the rejection. A rejection notice constitutes a case decision.

2. If the board proposes to grant a variance request submitted pursuant to this regulation, the applicant shall be notified in writing of this decision. Such notice shall identify the variance, the biosolids use facility involved, and shall specify the period of time for which the variance will be effective. Such notice shall provide that the variance will be terminated when the biosolids use facility comes into compliance with the applicable regulation and may be terminated upon a finding by the board that the biosolids use facility has failed to comply with any requirements or schedules issued in conjunction with the variance. The effective date of the variance shall be 15 days following its issuance.

F. Posting of variances. All variances granted for the design or operation of biosolids use facility are nontransferable. Any requirements of the variance shall become part of the permit for biosolids use subsequently granted by the board.

## **9VAC25-32-340. Permits.**

No owner shall cause or allow any land application, marketing or distribution of biosolids except in compliance with a permit issued by the board that authorizes these activities. Application for a permit shall be in accordance with 9VAC25-32-60. Information for the permit application is to be provided by completion and submission of the appropriate application forms and applicable sections in Article 4 (9VAC25-32-670 et seq.) of this part to the appropriate regional office. Applications can be obtained from any regional office.

A separate biosolids use permit shall be issued for each political jurisdiction (county or city) where land application is to be undertaken.

## **9VAC25-32-350. Procedures for obtaining a certificate to construct and certificate to operate.**

No owner shall cause or allow the construction, expansion, modification, or operation of facilities necessary for biosolids treatment or storage except in compliance with a certificate to construct (CTC) and a certificate to operate (CTO) issued by the board in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790).

## **9VAC25-32-355. Biosolids Use Regulation Advisory Committee.**

A. The department shall appoint a committee to advise the department on issues related to implementation and administration of this part. Advisory committee membership should include representatives of large size and small size communities and industries and their consultants. The advisory committee shall contain a maximum of 25 members.

B. The committee members shall be selected from organizations such as:

1. Virginia Association of Counties (VACO) and a representative, such as a local monitor, of a county with sites permitted for land application of biosolids in accordance with this regulation;

2. Virginia Municipal League (VML), the Association of Municipal Wastewater Agencies (VAMWA), and the owners of medium and small flow treatment works;

3. Virginia professional societies (i.e., engineers and soil scientists) and regional wastewater organizations such as the Virginia Water Environment Association;

4. Biosolids consultants and contractors;

5. State university and college faculties;

6. Agricultural industry, the Virginia Farm Bureau and farmers with land permitted in accordance with this regulation;

7. Medical professionals and "at large" citizens; and

8. State agencies such as the Department of Conservation and Recreation, the Department of Health, and the Department of Agriculture and Consumer Services.

C. Consideration shall also be given to appropriate citizens who are not members of these organizations and other interested parties and groups such as citizens' conservation organizations.

D. Each committee member may designate an alternate to serve when necessary.

E. The function of the committee will be to meet, discuss issues, and make recommendations to the department concerning the regulations and standards contained in this part and other policies, procedures and programs for regulating biosolids use and associated fees. The committee's

meetings will be advertised and open to the public, and comments and recommendations from the public will be received.

## Article 2

### Operational and Monitoring Requirements

#### **9VAC25-32-360. Monitoring; records; reporting.**

The board may require the owner or operator of any facility to install, use, and maintain monitoring equipment for internal testing of biosolids quality, to identify and determine the causes of operational problems and to determine the necessary corrective actions to correct such problems. If required, test results shall be recorded, compiled, and reported to the department.

#### **9VAC25-32-370. Minimum biosolids sampling and testing program.**

A. Sampling and testing methods shall conform to current United States Environmental Protection Agency (EPA) guidelines establishing test procedures for analysis of pollutants or other EPA-approved methods.

B. Either the operation and maintenance manual, sludge management plan, or management practices plan shall contain a specific testing schedule. The testing schedule shall include minimum tests and their frequencies as required to monitor the facility in accordance with the appropriate certificate and the operating permit issued under this regulation.

C. The following sampling instructions shall be followed when collecting samples as required by this regulation:

1. Raw sewage or sludge samples are to be collected prior to the treatment process unit operations.
2. Final treated samples are to be taken at a point following appropriate unit operations in the treatment process. An evaluation of biosolids treatment may require monitoring of fecal coliform levels in the treated sludge.
3. Compositing of samples shall be in accordance with the treatment works operation and maintenance manual. Composite samples of sludge shall consist of grab samples taken in accordance with either the operation and maintenance manual or management practices plan, as appropriate. Composite samples shall be representative of the quality and quantity of the biosolids used. Greater frequency of grab sampling may be desirable where abnormal variation in waste strength occurs. Automatic proportional samplers are considered a valid sampling method.

#### **9VAC25-32-380. Minimum operational testing and control program.**

A. Sampling and testing methods shall conform to current United States Environmental Protection Agency (EPA)

guidelines establishing test procedures for analysis of pollutants or other EPA-approved methods.

B. The information furnished with either the operation and maintenance manual, sludge management plan, or management practices plan should recommend and describe the control tests and their frequency that should be routinely conducted by the holder of the permit in order to monitor operations and verify the treatment classification achieved (Table 3). All special sampling methods should be identified. Biosolids use site sampling and testing frequencies should be in accordance with the requirements established by the instructions contained in the biosolids use operation and maintenance manual if provided.

C. Additional operational control information may be required on an individual basis by the department.

#### **9VAC25-32-390. Additional monitoring, reporting and recording requirements for land application.**

A. Either the operation and maintenance manual, sludge management plan or management practices plan shall contain a schedule of the required minimum tests necessary to monitor land application operation. Such testing schedule information for land application of biosolids shall contain instructions for recording and reporting. Monitoring of any associated land treatment systems shall be in accordance with the biosolids use operation and maintenance manual if provided.

B. The permit holder shall provide to the department, and to each locality in which it is permitted to land apply biosolids, written evidence of financial responsibility, including both current liability and pollution insurance, or such other evidence of financial responsibility as the board may establish by regulation in an amount not less than \$1 million per occurrence, which shall be available to pay claims for cleanup costs, personal injury, bodily injury and property damage resulting from the transport, storage and land application of biosolids in Virginia. The aggregate amount of financial liability maintained by the permit holder shall be \$1 million for companies with less than \$5 million in annual gross revenue and shall be \$2 million for companies with \$5 million or more in annual gross revenue.

C. Evidence of financial responsibility, which may include liability insurance, meeting the requirements herein shall be maintained by the permit holder at all times that it is authorized to transport, store or land apply biosolids in Virginia. The permit holder shall immediately notify the Department of Health in the event of any lapse or cancellation of such financial resources, including insurance coverage, as required by this section.

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## **9VAC25-32-400. Additional monitoring, reporting and recording requirements for sewage sludge and residual solids management.**

Either the operation and maintenance manual, sludge management plan, or management practices plan shall contain a schedule of required minimum tests and their frequency to be conducted for the sewage sludge and biosolids management system and shall also contain necessary information to document sewage sludge and biosolids quality. Such test schedule information should include instructions for recording and reporting. Monitoring, reporting and recording requirements for sewage sludge and biosolids quality control shall be in accordance with the sludge management plan or management practices plan in accordance with 9VAC25-32-500 B. The recordkeeping and reporting requirements for sewage sludge and biosolids management contained in the treatment works operation and maintenance manual shall apply to all application sites, regardless of size or frequency of application. However, the requirements relative to monitoring, reporting and recording of site-specific soils and monitoring, reporting and recording of ground water and surface water are not applicable for any site that meets either of the following criteria:

1. Whenever exceptional quality biosolids are marketed and distributed with a label or identification information that specifies proper quality information and describes how agronomic rates are to be determined. Also, whenever Class I treated biosolids are land applied so that (i) the annual loading rate will not result in annual maximum loading rates in excess of those specified in Table 8; (ii) applied biosolids will meet vector attraction requirements; (iii) the amount of nutrients applied does not exceed the total crop needs or agronomic loading rate; (iv) no additional biosolids are applied for at least five years, or the biosolids are applied to land maintained only as pasture or hay land for five years following the last application of biosolids and the nutrient loading rate does not exceed 70% of the annual total crop needs of the grass or hay cover (Tables A-2 and 11).

2. Whenever the application site area for biosolids processed by Class I or II treatment is no larger than 10 acres and is isolated (2,000 feet or more separation distance) from other sites receiving applications of biosolids within three years of the time biosolids are applied to the identified site and the necessary vector attraction requirements are met.

The department may recommend that specified site specific monitoring be performed by the holder of the permit for any biosolids land application practice regardless of frequency of application or size of the application area. Such recommendations will occur in situations in which groundwater contamination, surface runoff, soil toxicity, health hazards or nuisance conditions are identified as an

existing problem or documented as a potential problem as a result of biosolids use operations. Requirements of 9VAC 25-32-510 through 9VAC25-32-580 shall apply in full whether or not a monitoring waiver provision is applicable.

## **9VAC25-32-410. Operation and maintenance manuals.**

A. General. The general purpose of an operation and maintenance manual is to facilitate operation and maintenance of the biosolids use facilities within permit requirements for both normal conditions and generally anticipated adverse conditions. The manual shall be tailored to the size and type of system being employed. The manual shall be directed toward the operating staff required for the facility. The manual shall be updated as necessary and be made available to the operating staff. The manual should be designed as a reference document, being as brief as possible while presenting the information in a readily accessible manner.

B. Contents. The manual shall contain the testing and reporting elements required by this regulation. In addition, for information and guidance purposes, the manual should contain additional schedules that supplement these required schedules.

## **9VAC25-32-420. Operability.**

Independently operated essential equipment, or components, of biosolids use facilities, including treatment works, shall be provided with sufficient capacity and routine maintenance resources so that the average quantity of biosolids used may be reliably transported, stored, treated or otherwise managed in accordance with permit requirements. Permit noncompliance shall be prevented in those situations in which the largest component is out of service.

The need for spare parts should be determined from operational experience, evaluation of past maintenance requirements, etc. A spare parts inventory may be included in the operation and maintenance manual. The inventory should list the minimum and maximum quantities of the spare parts to be kept on hand, the equipment in which they are used, their storage location, replacement procedures and other pertinent information.

Sufficient spare parts determined as necessary to ensure continuous operability of essential unit operations and equipment should be either located at the treatment works or at readily accessible locations. The minimum quantities of spare parts actually provided shall be in accordance with the operation and maintenance manual.

## **9VAC25-32-430. Maintenance.**

A regular or routine program of preventive maintenance shall be adhered to. The operations and maintenance manual shall contain a system of maintenance requirements to be accomplished. The routine, minimum preventive maintenance system shall be in accordance with the operations and

maintenance manual. Such a system should provide for advanced scheduling of preventive maintenance and should be continually assessed in order to reflect increased service requirements as equipment ages or flow rates increase. Adequate records, files and inventories to assist the operator in his task should also be described in the operation and maintenance manual. Information systems provided for maintenance should describe the documentation required to verify biosolids treatment quality necessary for compliance with permits. Where certain components of the treatment process may be damaged by flooding so as to cause excessive delays in restoring the treatment process to a normal operating level, the means of protecting or removal of such components prior to flooding should be described in the operations and maintenance manual.

**9VAC25-32-440. Biosolids monitoring/reporting.**

A. Monitoring biosolids quality shall be performed as required for permit compliance. Monitoring frequency shall be sufficient to both reflect the degree of variability, if any, expected in the biosolids quality and the frequency of application. The following guidelines should provide sufficient data for characterizing the quality of biosolids for biosolids programs that land apply continuously throughout the year.

TABLE 1	
<u>Amount of biosolids<sup>(1)</sup> (metric tons per 365-day period)</u>	<u>Frequency</u>
<u>Greater than zero but less than 290</u>	<u>Once per year</u>
<u>Equal to or greater than 290 but less than 1,500</u>	<u>Once per quarter (four times per year)</u>
<u>Equal to or greater than 1,500 but less than 15,000</u>	<u>Once per 60 days (six times per year)</u>
<u>Equal to or greater than 15,000</u>	<u>Per month (12 times per year)</u>
<p><u>Note: <sup>(1)</sup> Either the amount of bulk sewage applied to the land or the amount of sewage sludge received by a person who prepares sewage sludge that is sold or given away in a bag or other container for application to the land (dry weight basis).</u></p>	

Note: Sampling shall be conducted at approximately equal intervals at the listed frequencies. Biosolids programs that store biosolids and land apply only during discrete events throughout the year shall schedule sampling events to coincide with application periods. The regulatory agency may require increased monitoring frequencies, if necessary, to adequately define any significant variability in biosolids quality. After two years of monitoring the permittee may request that the monitoring frequency be reduced, but in no

case to less than once per year in any year that biosolids are applied to land.

B. An activity report shall be submitted (postmarked) to the department by the 15th day of the month unless another date is specified in the permit in accordance with 9VAC25-32-80 I 4, following any month in which land application occurs. The report shall indicate those sites where land application activities took place during the previous month.

C. Biosolids application rates should be based on the annual average sludge quality. The average sludge quality should be established from the results of approved analytical testing of composite samples obtained during the most recent 12 months of monitoring. For proposed treatment works, rates may be initially based on the biosolids characteristic produced by similar generating facilities.

D. The required treatment and quality characteristics and the maximum allowable land application loading rates shall be established for biosolids use. In addition, operational monitoring results shall verify that required sludge treatment has achieved the specified levels of pathogen control and vector attraction reductions (Table 3). Adequate records on sludge composition, treatment classification, sludge application rates and methods of application for each site shall be maintained by the generator and owner. Table 4 shows a sample operating report for documenting the minimum required information. Reporting shall be yearly (postmarked by February 19 for the preceding calendar year) unless otherwise required. The generator and owner shall maintain the records as necessary for a minimum period of five years until further notification by the department. Sites receiving frequent applications of sludge that meet or exceed maximum cumulative constituent loadings and dedicated disposal sites should be properly referenced for future land transactions (see the sample Sludge Disposal Site Dedication Form - Table A-1).

**9VAC25-32-450. Sampling.**

A. General. The sampling procedures and protocols used for the national sewage sludge survey (EPA Office of Water Regulations and Standards, March 1988) or validated equivalent methods will be approved by the board through issuance of a permit for biosolids use. Composite samples are better than single grab samples because they define representative "average" levels of sludge characteristics. A large open container such as a one- to two-gallon capacity bucket will normally be necessary to obtain complete grab samples of sludge flows. The volume or weight of grab samples should be adjusted so as to represent approximately equal volumes or weights of the sludge volume or mass being sampled. These adjusted grab samples can then be added to form a composite sample.

B. Liquid sludge. In the case of digesters and liquid storage holding tanks, a representative sample shall be composed of

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at least four grab samples obtained during daily operations at the facility or land application site. Samples of liquid biosolids obtained under pressure or vacuum should be obtained shortly after the beginning, during and at the end of the time period that the biosolids are produced at the sampling point.

C. Biosolids storage facilities. Equal volumes of biosolids should be withdrawn from random locations across the width and throughout the length of the storage facility at the surface, mid-depth and near the bottom of the lagoon at each grab sample location. These grab samples should be added to form a composite mix. A range of the recommended minimum number of grab samples that should be obtained from various sizes of sludge lagoons in order to obtain a representative composite sample is:

<u>Lagoon Surface Area (Acres)</u>	<u>Minimum Number of Grab Samples</u>	
	<u>Depth less than 4 feet</u>	<u>Depth greater than 4 feet</u>
<u>1 to 9.99</u>	<u>4 to 5</u>	<u>6 to 8</u>
<u>10 or more</u>	<u>6 to 8</u>	<u>9 to 11</u>

D. Dewatered sludge. Small, equally sized grab samples of the dewatered sludge stream may be taken at equally spaced intervals over the period of operation of the dewatering unit. Centrifuged sludge samples may be taken from a belt conveyor or receiving hopper. Filter cake sludge samples may be taken from a belt conveyor or a portion of the cake may be removed as it leaves the unit. The smaller grab samples should be combined to form a representative composite sample. A composite sample can be obtained over the daily operational period at the land application site.

E. Compost sampling. Composite samples are preferred so that a representative average level of compost characteristics can be obtained from analytical testing. Although the compost material has been subjected to premixing, some variation in quality may exist and at least three grab samples of one kilogram or more should be taken of each mixture and combined to form a composite sample of that mixture. This mixture should be used for analytical testing or for combination with other composites to obtain a total composite sample representing a fixed period of operation. Compost samples may be taken with a scoop or shovel and placed in flexible bags that can be thoroughly shaken to mix grab samples.

F. Analysis and preservation of samples. In general, sludge samples should be refrigerated at approximately 4°C immediately after collection, which provides adequate preservation for most types of sludge physical and chemical analysis for a period up to seven days. Exact sample analysis and preservation techniques should be submitted in the sludge

management plan. Analytical procedures should be updated as needed.

## **9VAC25-32-460. Soils monitoring and reporting.**

Soil should be sampled and analyzed prior to sludge application to determine site suitability and to provide background data. After the land application program is underway, it may be necessary to continue monitoring possible changes in the soil characteristics of the application site. Reduced monitoring will usually apply for typical agricultural utilization projects where biosolids are applied to farmland at or below agronomic rates or on an infrequent basis (see Table 5). Reduced monitoring may also apply to one time sludge applications to forest or reclaimed lands. For background analysis, random composite soil samples from the zone of incorporation is required for infrequent applications and frequent applications at less than agronomic rates (total less than 15 dry tons per acre).

Generally, one subsample per acre should be taken for application sites of 10 acres or more receiving frequent applications. For frequent land application sites greater than 50 acres, a controlled area of approximately 10 acres in size may be provided that is representative of site loading and soil characteristics. The control area should be sampled through random collection of approximately 20 subsamples taken according to standard agricultural practices. Records of soil analysis must be maintained by the owner and submitted as required.

## **9VAC25-32-470. Crop monitoring and reporting.**

Vegetation monitoring may be required by the board upon recommendation of the department once every three years on sites with frequent applications of biosolids applied at or greater than agronomic rates and when 400 pounds per acre or more of available phosphorus has been applied to the soil. Analyses of plant tissue should be conducted at the proper growth stage as recommended by either the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Conservation and Recreation or Virginia Cooperative Extension Service. Routine analyses include nitrate-nitrogen, phosphorus, potassium, calcium, manganese, magnesium, iron, copper and zinc. Analysis for additional parameters may be necessary as determined on a case-by-case basis. Results shall be reported annually to the department.

## **9VAC25-32-480. Groundwater monitoring and reporting.**

A. Monitoring wells may be required by the board as recommended by the department for land treatment sites, sludge lagoons, or sludge holding facilities to monitor groundwater quality. The wells should be designed and located to meet specific geologic and hydrologic conditions at each site. Existing wells or springs may be approved for use as monitoring wells if they can be shown to provide a representative sample of groundwater conditions. The

monitoring well should be constructed so as to sample the shallowest occurrence of groundwater that can reliably be obtained. The wells must be deep enough to penetrate the water table, and the screened interval must be in the saturated zone. The well construction should include PVC casing and screen with a bottom end plug or cap. The casing joints should be of the threaded, split ring or some other type that does not require adhesive. The screened interval should be backfilled with washed porous media (sand/gravel) and a bentonite or other impermeable seal placed at least two feet above the screen. The remainder of the well may be backfilled with clean native materials. A concrete surface seal should slope away from the well. Locking caps are recommended. Upon well completion, a driller's log shall be submitted to the department.

B. Sampling procedures must assure maintenance of sample integrity. Samples should be collected in clean sample containers and with an uncontaminated sampling device. In order to obtain a representative sample, standing water in the well must be evacuated prior to sampling. At a minimum, at least three times the volume of water standing in the borehole should be removed prior to taking a sample for analysis to assure movement of formation water into the well and eliminate false readings that would be obtained from water that has stratified in the well. Samples may be obtained by pumping, bailing or pressure methods (e.g., Bar Cad samplers). The state does not endorse any one particular method or manufacturer, but each method has advantages and disadvantages that must be considered prior to final selection. Sampling methodology should be submitted for initial review. To obtain sufficient background groundwater quality data, three to six monthly samples should be collected from each observation well prior to placing the land application site or other facility into operation. Sampling should account for seasonal groundwater table fluctuations. Groundwater samples shall be collected and analyzed on a quarterly basis during operation of the site or facility. Table 6 lists typical parameters for groundwater monitoring. Additional test parameters may be required on a case-by-case basis.

C. Sample analysis and preservation techniques should be in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater.

TABLE 2

PARAMETERS FOR BIOSOLIDS ANALYSIS<sup>(1)</sup>

A. Suggested minimum

Source of sludge

Type of sludge (lime stabilized, aerobically digested, etc.)

Percent solids (%)

Volatile solids (%)

pH (standard units)

Total kjeldahl nitrogen (%)

Ammonia nitrogen (%)

Nitrates (mg/kg)

Total phosphorus (%)

Total potassium (%)

Alkalinity as CaCO<sub>3</sub>(mg/kg)<sup>(2)</sup>

Arsenic (mg/kg)

Cadmium (mg/kg)

Copper (mg/kg)

Lead (mg/kg)

Mercury (mg/kg)

Molybdenum (mg/kg)

Nickel (mg/kg)

Selenium (mg/kg)

Zinc (mg/kg)

<sup>(1)</sup> Values reported on a dry weight basis unless indicated.

<sup>(2)</sup> Lime treated sludges (10% or more lime by dry weight) should be analyzed for percent CaCO<sub>3</sub>.

B. Additional parameters such as the organic chemicals listed in Table 12 may be required for screening purposes as well as aluminum (mg/kg), water soluble boron (mg/kg), calcium (mg/kg), chlorides (mg/l), manganese (mg/kg), sulfates (mg/kg), and those pollutants for which removal credits are granted.

C. Microbiological testing may be necessary to document the sludge treatment classification (Table 3). Microbiological standards shall be verified by the log mean of the analytical results from testing of nine or more samples of the sludge source. Sampling events shall be separated by an appropriate period of time so as to be representative of the random and cyclic variations in sewage characteristics.

TABLE 3

STANDARDS FOR DOCUMENTATION OF PATHOGEN CONTROL AND VECTOR ATTRACTION REDUCTION LEVELS FOR BIOSOLIDS

A. Pathogen control standards (dry weight of sludge solids basis).

1. Class I treatment for Class A pathogen control.

a.<sup>(1)</sup> Composting or other acceptable time-temperature treatment\* shall result in a biosolids content equal to or less than either 1,000 fecal coliform per gram or three salmonella per four grams of total solids in treated sludge prior to removal for use or preparation for distribution.

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b. Stabilization\*\*<sup>(2)</sup> Verify a biosolids content less than either 1,000 MPN fecal coliform per gram of total solids, or three salmonella, or one virus (PFU), or one helminth egg, per four grams of total sludge solids and provide that vector attraction reduction requirements will be met upon use.

## 2. Class II treatment for Class B pathogen control.

a. <sup>(1)</sup> When the influent sludge stream to the stabilization unit operation contains more than 6 log<sub>10</sub> fecal coliform per gram of total solids, a reduction of 1.5 log<sub>10</sub> of fecal coliform or more may be required for stabilization.

b. Stabilization <sup>(2)</sup>. Verify biosolids content maximum of 6.3 log<sub>10</sub> of fecal coliform per gram of total solids in sludges subjected to adequate treatment and provide that vector attraction reduction requirements will be met upon use.

B. Vector attraction reduction requirements (must satisfy one of the following for approval of land application of biosolids).

### 1. Thirty-eight percent volatile solids (VS) reduction by digestion processes, or:

a. Less than 38% reduction by anaerobic digestion if additional treatment (additional 40 days or more at 32°C or more) results in less than 17% additional VS reduction:

$$\text{Additional VS Reduction} = \frac{\text{VSD1}\% \text{BFVSD2}}{\text{VSD1}\% \text{BF}(\text{VSD1})(\text{VSD2})}$$

D1 = Initial conventional digestion period

D2 = Additional 40-day digestion period

b. Less than 38% reduction by aerobic digestion if the specific oxygen uptake rate (SOUR) of sludge is 1.5 or less milligrams of oxygen per hour per gram of total sludge solids (dry weight basis) at a temperature of 20°C.

c. Less than 38% reduction by aerobic digestion if additional treatment (additional 30 days or more at 20°C or more) results in less than 15% additional VS reduction.

d. Less than 38% reduction if treated in an adequately aerated unit operation for 14 days or more at a temperature exceeding 40°C and the average sludge temperature exceeds 45°C.

2. Sludge pH is 12 or more (alkaline addition) for two consecutive hours and remains at 11.5 or higher for 22 additional hours (no further alkaline additions), or

3. Seventy-five percent or more total solids in treated sludge if no untreated primary sludge is included, or 90% total solids if unstabilized primary sludge is included, prior to any mixing with other materials, or

4. Either incorporation of treated sludge into the soil within six hours of surface application, or direct injection below the surface of the land so that no evidence of any significant amounts of sludge is present on the land surface within one hour of injection.

5. For land application of biosolids receiving Class I treatment:

a. For surface application: apply to land within eight hours of final treatment and incorporate below the surface within six hours of application, or achieve one of the appropriate vector attraction reduction requirements by treatment.

b. For subsurface application: inject within eight hours of final treatment or achieve one of the appropriate vector attraction reduction requirements by treatment.

C. Documentation statement for submission of treatment, or quality, verification reports:

I have submitted the proper documentation to verify that the necessary levels of pathogen reduction and vector attraction reduction have been achieved for all sludge to be land applied in accordance with the permit requirements. These determinations have been made under my direction and supervision in accordance with approved procedures developed to ensure that qualified personnel obtain and evaluate the information necessary to ensure permit compliance. Also, the sludge quality characteristics are suitable for land application in accordance with permit requirements (if appropriate).

Signed by Responsible Person in Charge

(Title if appropriate) Date

<sup>(1)</sup> Note: Refers to an acceptable method of treatment with established operational controls capable of treating sludge to produce the required microbiological standards (see Article 3 (9VAC25-32-490 et seq. of this part).

<sup>(2)</sup> Refers to testing standards.

TABLE 4

## EXAMPLE OF REPORT FOR SUBMISSION TO FIELD OFFICES

### FIELD REPORT

PROJECT/PERMITTEE: \_\_\_\_\_ PERMIT NO./FIELD NO: \_\_\_\_\_

(LAND OWNER/FARMER:) \_\_\_\_\_ FIELD ACRES: \_\_\_\_\_

APPLICATION MODE: \_\_\_\_\_ DATE AS OF: \_\_\_\_\_

GALLONS, WET TONS OR CUBIC YARDS

APPLIED: \_\_\_\_\_ Month to Date \_\_\_\_\_ Year to Date \_\_\_\_\_

DRY TONS/ACRE APPLIED: \_\_\_\_\_ Month to Date \_\_\_\_\_ Year to Date \_\_\_\_\_

\_\_\_\_\_ Lifetime to Date \_\_\_\_\_

CROP/YIELD \_\_\_\_\_ SOIL pH \_\_\_\_\_

\_\_\_\_\_ LBS. APPLIED/ACRE \_\_\_\_\_

SLUDGE PARAMETER MONTH TO DATE YEAR TO DATE LIFETIME TO DATE

P.A.N. \_\_\_\_\_ N/A

CaCO<sub>3</sub> \_\_\_\_\_ N/A

P. \_\_\_\_\_ N/A

K \_\_\_\_\_ N/A

As

Cd

Cu

Mo

Ni

Pb

Se

Zn

Other:

DAILY LOADING FIELD SHEET

DATE SOLIDS GALLONS, WET TONS OR CUBIC YARDS DRY TONS

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(If nuisance problems of odors or problems with uniform applications develop, the appropriate regional offices of the Virginia Department of Environmental Quality shall be notified.)

Upon such notification, were any operational changes made? Yes\* No

\*Specify the methods utilized to comply with treatment/application requirements on a separate attachment.

TABLE 5  
RECOMMENDED SOIL TEST PARAMETERS FOR LAND APPLICATION SITES<sup>(1)</sup>

<u>Parameter</u>	<u>BIOSOLIDS APPLICATION</u>			<u>STORAGE</u>
	<u>Infrequent<sup>(2)</sup></u>	<u>Frequent Below Agronomic Rates<sup>(2)</sup></u>	<u>Frequent at Agronomic<sup>(2) (3)</sup></u>	<u>Supernatant<sup>(4)</sup></u>
<u>Soil organic matter (%)</u>			*	*
<u>Soil pH (Std. Units)</u>	*	*	*	*
<u>Cation exchange capacity (me/100g)</u>			*	
<u>Total nitrogen (ppm)</u>			*	*
<u>Organic nitrogen (ppm)</u>			*	*
<u>Ammonia nitrogen (ppm)</u>			*	
<u>Available phosphorus (ppm)</u>	*	*	*	*
<u>Exchangeable potassium (ppm)</u>	*	*	*	
<u>Exchangeable sodium (mg/100g)</u>			*	*
<u>Exchangeable calcium (mg/100g)</u>			*	*
<u>Exchangeable magnesium (mg/100g)</u>	*		*	*
<u>Copper (ppm)</u>			*	*
<u>Nickel (ppm)</u>			*	*
<u>Zinc (ppm)</u>			*	*
<u>Cadmium (ppm)</u>			*	*
<u>Lead (ppm)</u>			*	*
<u>Manganese (ppm)</u>			*	
<u>Molybdenum (ppm)</u>			*	

<u>Selenium (ppm)</u>			*	
<u>Particle size analysis or USDA Textural estimate (%)</u>			*	*
<u>Hydraulic conductivity (in/hr)</u>				*
<p><sup>(1)</sup> <u>Note: Unless otherwise stated, analyses shall be reported on a dry weight basis(*).</u></p> <p><sup>(2)</sup> <u>See 9VAC25-32-560 B 3.</u></p> <p><sup>(3)</sup> <u>Testing requirements to be adjusted in accordance with prior analytical test results. Heavy metal analyses are not required but once every three years before application.</u></p> <p><sup>(4)</sup> <u>Liquid biosolids derived from biosolids use facilities.</u></p>				

TABLE 6  
SUGGESTED GROUNDWATER MONITORING PARAMETERS AND MONITORING FREQUENCY

<u>Annual Monitoring</u>	<u>Quarterly Monitoring</u>
<u>Total Kjeldahl Nitrogen</u>	<u>Nitrate Nitrogen</u>
<u>Ammonia Nitrogen</u>	<u>pH</u>
<u>Phosphorus</u>	<u>Conductivity</u>
<u>Sodium</u>	<u>Chlorides</u>
<u>Boron</u>	<u>Static Water Level</u>
<u>Copper</u>	
<u>Lead</u>	
<u>Nickel</u>	
<u>Cadmium</u>	
<u>Zinc</u>	
<u>Hardness</u>	
<u>Alkalinity</u>	
<u>COD (TOC)</u>	
<u>Pathogen Indicator Organism</u>	

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## Article 3

### Biosolids Use Standards and Practices

#### **9VAC25-32-490. Compliance with biosolids use practices of this chapter.**

Guidelines set forth in 9VAC25-32-500 through 9VAC25-32-660 of this regulation specify minimum standards for biosolids use for land application, marketing and distribution, including biosolids quality and site specific management practices. Compliance with this chapter will not be required for facilities not including land application, distribution, or marketing, which have received the approval of the Commissioner of the State Department of Health and the State Water Control Board and for which operation has commenced as of January 1, 2008. Such operation of facilities is deemed to be commenced upon issuance of a certificate to operate in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790). However, the board may impose standards and requirements that are more stringent than those contained in this regulation when required to protect public health or prevent nuisance conditions from developing either within critical areas, or when special conditions develop prior to or during biosolids use operations. Conformance to local land use zoning and planning should be resolved between the local government and the facility owner or permit holder. Applications submitted for facilities must demonstrate that the facility and biosolids use management practices will adequately safeguard public health and will comply with the certificate and permit requirements, as appropriate. Submissions that are in substantial compliance with this regulation and comply with

any additional requirements as noted above will be approved. Justification for biosolid use proposals may be required for those portions of the submitted proposal that differ from these criteria. The owner or owner's agent shall identify and justify noncompliance with specific standards or "shall" criteria that the department identifies, or the applicant, in his judgment, believes to be substantial in nature. The department may request changes in designs that are not in substantial compliance with this regulation and that are not adequately justified by the applicant. The fact that significant work was accomplished on a specific permit application prior to adoption of this regulation shall be a consideration when evaluating applications.

#### **9VAC25-32-500. Sludge management.**

A. Sludge management activities shall be described in a sludge management plan or a management practices plan submitted by the owner or the owner's agent to the department for review and approval in accordance with this section. Before sludge is utilized or disposed of, its potential effects on the land and state waters should be evaluated. Land application and facilities for biosolids use shall not result in flooding or pose a hazard to public health, wildlife, water

quality, or other environmental resources as a result of biosolids transport due to flooding and subsequent runoff. Treatment works owners involved in biosolids use management practices may need to require pretreatment of industrial waste for control of contaminants of concern in order to comply with this regulation.

B. The scope and purpose, requirements, and submission and approval of sludge management plans or management practices plans are described in this subsection.

1. The general purpose of these plans is to facilitate a determination by the board that the sludge management plan or management practices plan developed by the owner presents the necessary technical guidance and regulatory requirements to facilitate the proper management of sewage sludge including use of biosolids for both normal conditions and generally anticipated adverse conditions. The plan should be developed as a reference document, being as brief as possible while presenting the information in a clear, concise and readily accessible manner. The plan should be directed toward the management option(s) for biosolids use selected for the treatment works. The plan shall address methods of controlling and monitoring the quality of sludge by the owner and the means of use of biosolids developed from that sludge by the owner or his agent (9VAC25-32-670 and 9VAC25-32-680).

2. Complete sludge management plans or management practices plans shall be submitted for all biosolids use activities, by the owner, or owner's agent. The plan shall contain the elements required by applicable sections of this regulation (9VAC25-32-670 and 9VAC25-32-680).

3. Submission and approval of sludge management plans or management practices plans involving the land application of biosolids shall be at the time of permit application as follows:

a. Three copies of the final sludge management plan or management practices plan shall be submitted to the appropriate regional office. The technical evaluation of the plan will not commence until the applicant has submitted all necessary information.

b. Upon receipt of comments or no response by contacted agencies the department will complete the evaluation of the plan and the board will approve or disapprove the plan as technically adequate.

c. The board will approve the plan if it is determined that biosolids use will be in compliance with Article 2 (9VAC25-32-360 et seq.) of this part. If the board determines that substantial revision to the plan is required, the department shall send a letter to the owner and plan preparer, outlining the necessary revision and requesting submission of a revised plan within 60 days. A revised plan constitutes a resubmittal.

## **9VAC25-32-510. General biosolids use standards.**

A. 9VAC25-32-510 and 9VAC25-32-550 provide minimum criteria that will be used for reviewing sludge management plans and management practices plans. Each plan shall address site-specific management practices involving use of biosolids. Final disposition of sludge may involve use or disposal. For the purpose of 9VAC25-32-510 and 9VAC25-32-550, "use" shall include resource recovery, recycling or deriving beneficial use from the material. "Disposal" shall involve the final disposition of a waste material without resource recovery, recycling or deriving beneficial use from the material.

B. All practical use options should be evaluated before disposal options are evaluated or selected. Biosolids use practices include land application for agricultural, nonagricultural and silvicultural use and the distribution and marketing of exceptional quality biosolids. Sludge disposal methods include incineration, landfill codisposal, surface disposal, and other dedicated disposal practices, such as burial on dedicated disposal sites.

C. Water quality protection and monitoring provisions shall be included in all sludge management plans and management practices plans, except for those land application practices designed for limited loadings (amounts per area per time period) within defined field areas in agricultural use. Groundwater monitoring requirements shall be evaluated by the board for annual application of biosolids to specific sites, reclamation of disturbed and marginal lands and application to forest land (silviculture). Submittal of site-specific (soils and other) information for each identified separate field area shall be required for issuance of permits. For information regarding handling and disposal of septage, refer to the Sewage Handling and Disposal Regulations, 12VAC5-610. Septage treated and managed in accordance with standards contained in this regulation is defined as either sewage sludge or as biosolids as appropriate.

D. Conformance of biosolids use to local land use zoning and planning should be resolved between the local government and the permit applicant. The permit applicant shall attempt to notify land owners of property within 200 feet and 1,000 feet of the boundaries of sites proposed for frequent use and dedicated sites, respectively, and furnish the department and the chief executive officer or designee for the local government where the site is located with acceptable documentation of such notifications (i.e., intent to land-apply biosolids on the proposed locations). Relevant concerns of adjacent landowners will be considered in the evaluation of site suitability.

E. The requirements for processing approvals of sludge management plans and management practices plans are included in 9VAC25-32-500 B as well as (i) requirements for notification of applications, hearings and meetings, and (ii)

minimum information required for completion of a sludge management plan for land application (9VAC25-32-670 and 9VAC 25-32-680).

F. At least 100 days prior to commencing land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification that is substantially in compliance with this section to the chief executive officer or designee for the local government where the site is located. This requirement may be satisfied by providing a list of available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. If the site is located in more than one county, the information shall be provided to all jurisdictions where the site is located. Sufficiency of such notices shall be determined by the department.

G. The notification required by this section shall include the following:

1. The name, address and telephone number of the permit holder, including the name of a representative knowledgeable of the permit;
2. Identification by tax map number and farm service agency (FSA) farm tract number of parcels on which land application is to take place;
3. A map indicating haul routes to each site where land application is to take place;
4. The name or title, and telephone number of at least one individual designated by the permit holder to respond to questions and complaints related to the land application project;
5. The approximate dates on which land application is to begin and end at the site;
6. The name and telephone number of the person or persons at the Virginia Department of Health to be contacted in connection with the permit; and
7. The name, address, and telephone number of the wastewater treatment facility, or facilities, from which the biosolids will originate, including the name or title of a representative of the treatment facility that is knowledgeable about the land application operation.

H. The permit holder shall deliver or cause to be delivered written notification to the department as least 14 days prior to commencing land application of sewage sludge at a permitted site. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.

I. Within 24 hours of receiving notification of a complaint, the permit holder shall commence investigation of said complaint. The permit holder shall confirm receipt of a complaint by phone, email or facsimile to the department, the

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chief executive officer or designee for the local government of the jurisdiction in which the complaint originates, and the owner of the treatment facility from which the biosolids originated within 24 hours after receiving the complaint. Complaints and responses thereto shall be documented by the permit holder and submitted with monthly land application reports to department and copied to the chief executive officer or designee for the local government and the owner of the treatment facility from which the biosolids originated.

Localities receiving complaints concerning land application of sewage sludge shall notify the department and the permit holder.

## **9VAC25-32-520. Sludge quality and composition.**

A. Sampling and testing sludge. Samples shall be collected so as to provide a representative composition of the sludge. Analytical testing shall be performed by a laboratory capable of testing in accordance with current EPA-approved methods or other accepted methods. The operational section of this regulation establishes the minimum constituents that shall be analyzed and the sampling and preservation procedures that should be utilized. The sludge management plan or management practices plan shall detail both the sampling and testing methods used to characterize the sludge.

B. Nonhazardous declaration. Regulations under the Resource Conservation and Recovery Act (RCRA) and the Virginia Hazardous Waste Management Regulations (9VAC20-60) identify listed hazardous wastes and hazardous waste characteristics. Municipal wastewater or sewage sludge is neither excluded nor specifically listed as hazardous waste. Hazardous wastes as established through RCRA and appropriate state regulations are not managed under this regulation. The owner shall monitor sludge characteristics as required to determine if it is hazardous or nonhazardous and declare to the department that the sludge generated at his facility is nonhazardous.

C. Sludge treatment. Sludges shall be subjected to a treatment process sequence designed to reduce both the pathogen content and the solids content to the appropriate level for the selected method of management, such as land application. For such use options, the sludge treatment provided shall minimize the potential for vector attraction and prevent objectionable odor problems from developing during management. Acceptable levels of pathogen reduction may be achieved by various established conventional treatment methods including Class I treatment to accomplish Class A pathogen control and Class II treatment to accomplish Class B pathogen control 9VAC25-32-610. The level of pathogen control achieved by nonconventional treatment must be verified by microbiological monitoring (Table 3).

For land application, Class B pathogen, or better, shall be achieved. Such Class I or II treatment may involve either: anaerobic or aerobic digestion, high or low temperature

composting, heat treatment, air drying, or chemical treatment processes utilizing alkaline additives or chlorine. For use of treated sludge or sludge products involving a high potential for public contact, it may be necessary to achieve further pathogen reduction (Class A) beyond that attained by the above processes. Such Class I treatment may be accomplished by (i) heat treatment and drying, (ii) thermophilic composting, (iii) alkaline treatment. A three-log reduction or more (a thousand-fold reduction) in pathogenic bacteria and viral microorganisms to meet conventional treatment standards. Raw sludge levels of pathogenic bacteria and viral microorganisms can be effectively reduced to safe levels by conventional Class I treatment methods.

Properly treated sludges can be safely utilized and should not create any nuisance problems when managed in accordance with approved sludge management or management practices plans. A sludge that receives Class I or II treatment for adequate pathogen control and is treated or managed to properly reduce vector attraction and pollutants within acceptable levels (Table 7-A) is referred to as "biosolids." A Class I treated sludge with approved control of vector attraction and acceptable levels of pollutants (Table 7-A) is referred to as "exceptional quality biosolids."

D. Sludge composition. The characterization of sludge properties is a necessary first step in the design of a use/disposal system. Monitoring and testing for certain pollutants shall be achieved prior to specific use or disposal practices. For the purposes of this regulation, sludge management and testing methods shall account for moisture content including (i) liquid sludge defined as sludges with less than 15% total solids, (ii) dewatered sludge normally defined as sludges with 15% to 30% total solids; or (iii) dried sludge normally defined as sludges with more than 30% total solids.

## **9VAC25-32-530. Land acquisition and management control.**

A. When land application of sludge is proposed, the continued availability of the land and protection from improper concurrent use during the utilization period shall be assured. A written agreement shall be established between the landowner and owner to be submitted with the permit application, whereby the landowner, among other things, shall consent to apply sewage sludge on his property. The responsibility for obtaining and maintaining the agreements lies with the party who is the holder of the permit. Site management controls shall include access limitations relative to the level of pathogen control achieved during treatment. In addition, agricultural use of sludge in accordance with this regulation is not to result in harm to threatened or endangered species of plant, fish, or wildlife, nor result in the destruction or adverse modification of the critical habitat of a threatened or endangered species. Site-specific information shall be

provided as part of the sludge management or management practices plan.

B. At least 48 hours prior to delivery of biosolids for land application on any site permitted under this regulation, the permit holder shall post a sign at the site that substantially complies with this section, is visible and legible from the public right-of-way, and conforms to the specifications herein. If the site is not located adjacent to a public right-of-way, the sign shall be posted at or near the intersection of the public right-of-way and the main site access road or driveway to the site. The department may grant a waiver to this or any other requirement, or require alternative posting options due to extenuating circumstances. The sign shall remain in place for at least 48 hours after land application has been completed at the site.

C. The sign shall be made of weather-resistant materials and shall be sturdily mounted so as to be capable of remaining in place and legible throughout the period that the sign is required at the site. Signs required by this section shall be temporary, nonilluminated, four square feet or more in area and shall only contain the following information:

1. A statement that biosolids are being land-applied at the site;
2. The name and telephone number of the permit holder as well as the name or title, and telephone number of an individual designated by the permit holder to respond to complaints and inquiries; and
3. Contact information for the Virginia Department of Health, including a telephone number for complaints and inquiries.

D. The permit holder shall promptly replace or repair any sign that has been removed from a land application site prior to 48 hours after completion of land application or that has been damaged so as to render any of its required information illegible.

### **9VAC25-32-540. Transport.**

A. Transport routes should follow primary highways, should avoid residential areas when possible, and should comply with all Virginia Department of Transportation requirements and standards. Transport vehicles shall be sufficiently sealed to prevent leakage and spillage of sludge. For sludges with a solids content of less than 15%, totally closed watertight transport vehicles with rigid tops shall be provided to prevent spillage unless adequate justification is provided to demonstrate that such controls are unnecessary. The board may also require certain dewatered sludges exceeding 15% solids content to be handled as liquid sludges. The minimum information for sludge transport that shall be supplied in the sludge management plan is listed in 9VAC25-32-670 and 9VAC25-32-680.

B. The permit holder shall be responsible for the prompt cleanup and removal of biosolids spilled during transport to the land application site or to or from a storage facility. The operations manual shall include a plan for the prevention of spills during transport and for the cleanup and removal of spills. The permit holder shall ensure that its personnel, subcontractors or the drivers of vehicles transporting biosolids for land application shall be properly trained in procedures for spill removal and cleanup.

C. The permit holder shall take appropriate steps to prevent drag-out and track-out of dirt and debris or biosolids from land application sites onto public roads. Where material is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly as soon as practicable, but no later than the end of each day.

D. The permit holder shall promptly report offsite spills to the Virginia Department of Health, the chief executive officer or designee for the local government and the owner of the facility generating the biosolids. The report shall be made verbally as soon as possible, but no later than 24 hours after the discovery of the spill. After business hours notification may be provided by voicemail, facsimile or email.

E. A written report, which shall include a description of measures taken in response to the spill, shall be submitted by the permit holder to the Virginia Department of Health, the chief executive officer or designee for the local government and the owner of the facility generating the biosolids within five working days of the spill. The report may be sent by first class mail, facsimile or email, or it may be hand delivered.

### **9VAC25-32-550. Storage facilities.**

A. No person shall apply to the Department of Environmental Quality for a permit, a variance, or a permit modification authorizing storage of sewage sludge without first complying with all requirements adopted pursuant to §62.1-44.19:3 R of the Code of Virginia.

B. Three types of storage may be integrated into a complete sludge management plan including (i) "emergency storage" involving immediate implementation of storage for any sludge that becomes necessary due to unforeseen circumstances, (ii) "temporary storage" involving the provision of storage of stabilized sludges at the land application site that becomes necessary due to unforeseen climatic events that preclude land application of biosolids in the day that it is transported from the generator, or (iii) "routine storage" involving the storage of biosolids as necessary for all nonapplication periods of the year. Only routine storage facilities shall be considered a facility under this regulation.

C. Emergency storage. The owner shall notify the department upon implementation of any emergency storage. Approval of such storage and subsequent processing of the

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sludge and supernatant will be considered as a contingency plan integrated into the sludge management plan. Only emergency storage shall be used for storage of unstabilized sludges. Further processing utilization and disposal shall be conducted in accordance with the approved sludge management plan. Design and implementation of facilities used for emergency storage shall not result in water quality, public health or nuisance problems.

D. Temporary storage. The owner shall notify the department whenever it is necessary to implement temporary storage. Temporary storage may be utilized at the land application site due to unforeseen climatic factors that preclude application of sludge (either offloaded at the site or in transport to the site) to permitted sites within the same working day. Temporary storage is not to be used as a substitute for routine storage and is restricted as follows:

1. Sludge stored at the site shall be land applied prior to additional offloading of sludge at the same site;
2. The owner shall be restricted to storing a daily maximum amount of 100 wet tons per operational site;
3. The stored sludge shall be land applied within 30 days from the initiation of storage or moved to a routine sludge facility;
4. Approval of plans for temporary storage will be considered as part of the overall sludge management plan;
5. Temporary storage shall not occur in areas prone to flooding at a 25-year or less frequency interval;
6. A synthetic liner shall be required for placement under and over sludge stored in this manner with one exception: where sludge is stockpiled for less than seven days, a liner placed under the stored sludge is not required. Surface water diversions and other best management provisions (BMP) should be utilized as appropriate; and
7. Temporary storage shall not result in water quality, public health or nuisance problems.

E. Routine storage. Routine storage facilities shall be provided for all land application projects if no alternative means of management is available during nonapplication periods. Plans and specifications for any surface storage facilities (pits, ponds, lagoons) or aboveground facilities (tanks, pads) shall be submitted as part of the minimum information requirements.

1. Location. The facility shall be located at an elevation that is not subject to, or is otherwise protected against, inundation produced by the 100-year flood/wave action as defined by U.S. Geological Survey or equivalent information. Storage facilities should be located to provide minimum visibility. All storage facilities with a capacity in excess of 100 wet tons and located offsite of property owned by the generator shall be provided with a minimum

750-foot buffer zone. The length of the buffer zone considered will be the distance measured from the perimeter of the storage facility. Residential uses, high-density human activities and activities involving food preparation are prohibited within the buffer zone. The board may consider a reduction of up to half of the above buffer requirements based on such facts as lagoon area, topography, prevailing wind direction, and the inclusion of an effective windbreak in the overall design.

2. Design capacity. The design capacity shall be sufficient to store a minimum volume equivalent to 60 days or more average production of biosolids and the incidental wastewater generated by operation of the treatment works plus sufficient capacity necessary for: (i) the 25 year-24 hour design storm (incident rainfall and any runoff as may be present); (ii) net precipitation excess during the storage period; and (iii) an additional one foot freeboard from the maximum water level (attributed to the sum of the above factors) to the top berm elevation. Storage capacity of less than that specified above will be considered on a case-by-case basis only if sufficient justification warrants such a reduction. If alternative methods of management cannot be adequately verified, contractors should provide for a minimum of 30 days of in-state routine storage capacity for the average quantity of sludge transported into Virginia from out-of-state treatment works generating at least a Class II level treated sludge.

3. Construction. Storage facilities shall be of uniform shape (round, square, rectangular) with no narrow or elongated portions. The facilities shall be lined in accordance with the requirements contained in sewerage regulations or certificate. The facilities shall also be designed to permit access of equipment necessary for loading and unloading biosolids, and should be designed with receiving facilities to allow for even distribution of sludge into the facility. Design should also provide for truck cleaning facilities as may be necessary. Storage facilities with a capacity of 100 wet tons or less shall comply with the provision for temporary storage as a minimum.

4. Monitoring. All sludge storage facilities in excess of 100-wet ton capacity shall be monitored in accordance with the requirements of this regulation. Plans and specifications shall be provided for such a monitoring program in accordance with the minimum information specified in Article 4 (9VAC25-32-670 et seq.) of this part.

5. Operation. Only biosolids suitable for land application (Class A or B biosolids) shall be placed into permitted routine storage facilities. Storage of biosolids located offsite or remote from the wastewater treatment works during the summer months shall be avoided whenever possible so that the routine storage facility remains as empty as possible during the summer months. Storage facilities should be operated in a manner such that

sufficient freeboard is provided to ensure that the maximum anticipated high water elevation due to any and all design storm inputs is not less than one foot below the top berm elevation. Complete plans for supernatant disposal shall be provided in accordance with Article 4 (9VAC25-32-670 et seq.) of this part. Plans for supernatant disposal may include transport to the sewage treatment works, mixing with the biosolids for land application or land application separately. However, separate land application of supernatant will be regulated as liquid sludge; additional testing, monitoring and treatment (disinfection) may be required. The facility site shall be fenced to a minimum height of five feet; gates and locks shall be provided to control access. The fence should be posted with signs identifying the facility. The fence should not be constructed closer than 10 feet to the outside edge of the facility or appurtenances, to allow adequate accessibility.

6. Closure. An appropriate plan of closure or abandonment shall be developed by the permittee when the facility ceases to be utilized and approved by the board. Such plans may also be reviewed by the Department of Health.

7. Recordkeeping. A manifest system shall be developed, implemented and maintained and be available for inspection during operations as part of the overall daily recordkeeping for the project Article 4 (9VAC25-32-670 et seq.) of this part.

## **9VAC25-32-560. Biosolids utilization methods.**

### A. Requirements applicable to land application of biosolids.

1. All biosolids application rates, application times and other site management operations shall be restricted as specified in the approved management practices plan. The management practices plan shall include a nutrient management plan as required by 9VAC25-32-680 and prepared by a certified nutrient management planner as stipulated in regulations promulgated pursuant to §10.1-104.2 of the Code of Virginia.

2. Biosolids shall be treated to meet standards for land application as required by Part IX (9VAC25-32-310 et seq.) of this chapter prior to delivery at the land application site. No person shall alter the composition of biosolids at a site approved for land application of biosolids under a Virginia Pollution Abatement Permit. Any person who engages in the alteration of such biosolids shall be subject to the penalties provided in Article 6 (§62.1-44.31 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. The addition of lime or deodorants to biosolids that have been treated to meet standards for land application as required by Part IX (9VAC25-32-310 et seq.) of this chapter shall not constitute alteration of the composition of biosolids. The board may authorize public institutions of higher

education to conduct scientific research on the composition of biosolids that may be applied to land.

B. Agricultural use. Agricultural use of sewage sludge is the land application of biosolids (Table 7) to cropland or pasture land to obtain agronomic benefits as a plant nutrient source and soil conditioner. This use shall require a system design that ensures that the land application procedures are performed in accordance with sound agronomic principles.

1. Sludge treatment. As a minimum, biosolids that are applied to the land or incorporated into the soil shall be treated by a Class II pathogen treatment process and shall be treated or managed to provide an acceptable level of vector attraction reduction.

2. Site soils. Soils best suited for agricultural use should possess good tilth and drainage capabilities, have moderate to high surface infiltration rates and moderate to slow subsoil permeability. Depth to bedrock or restrictive layers should be a minimum of 18 inches. Depth to the seasonal water table should exceed 18 inches as defined by the Soil Conservation Service soil survey. If such information is not available the water table depth may be determined by soil characteristics or water table observations. If the soil survey or such evidence indicates that the seasonal water table can be less than 18 inches below the average ground surface, soil borings shall be utilized within seven days prior to land application operations during periods of high water table for the soil series present, to verify that the 18-inch depth restriction is complied with during field operations. The use of soil borings and water table depth verification may be required for such sites from November to May (during seasonal high water table elevations) of each year depending on soil type. Constructed channels (agricultural drainage ditch) may be utilized to remove surface water and lower the water table as necessary for crop productions and site management.

The pH of the biosolids and soil mixture shall be 6.0 or greater at the time of each biosolids application if the biosolids cadmium concentration is greater than or equal to 21 mg/kg. The soil pH must be properly tested and recorded prior to land application operations during which a pH change of one-half unit or more may occur within the zone of incorporation (i.e., use of biosolids containing lime or other alkaline additives at 10% or more of dry solid weight).

### 3. Management practices.

a. Application rates and requirements. Process design considerations shall include sludge composition, soil characteristics, climate, vegetation, cropping practices, and other pertinent factors in determining application rates. Site specific application rates should be proposed using pertinent biosolids plant available nitrogen (PAN) and crop nutrient needs (agronomic rate listed in Table

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10) and the cumulative trace element loading rates (Table 8). Lime amended biosolids shall be applied at rates that are not expected to result in a target soil pH in the plow layer above a pH of 6.5 for soils located in the coastal plain and above a pH of 6.8 in other areas of the state. Agricultural use of treated septage shall be in accordance with these requirements (Table 12). The biosolids application rate, application timing and all other site management practices shall be restricted to the following criteria in accordance with the approved management practices plan including the nutrient management plan that may prescribe more restrictive site management practices than the following criteria:

(1) For infrequent applications, biosolids may be applied such that the total crop needs for nitrogen (Table 10 Agronomic Rate) is not exceeded (in order to minimize the amount of nitrogen that passes below the crop root zone to actually or potentially pollute groundwater), during a one-year crop rotation period including the production and harvesting of two crops in succession within a consecutive 12-month growing season. However, the total application of biosolids shall not exceed a computed maximum loading of 15 dry tons per acre, unless a higher loading can be justified in relation to both the biosolids and the site characteristics, including the biosolids nutrient and dry solids content and the site slopes. No further applications of biosolids shall be allowed for a period of three years from the date that the agronomic rate is achieved for the crop or crops grown in the following 12 months.

(2) The infrequent application rate may be restricted: (i) down to 10% of the maximum cumulative loading rate (Table 8) for cadmium and lead (i.e., 2.0 kilograms per hectare (kg/ha) for cadmium); or (ii) to account for all sources of nutrients applied to the site, including existing residuals.

(3) The infrequent application rate may also be restricted by the lime content of the biosolids.

(4) For systems designed for frequent application of biosolids (application of the PAN requirement for a normal crop rotation more frequently than once in every three years), the previous year's applied biosolids nitrogen and mineralization rates (Table 11) and soil phosphorus levels, shall be considered in the design and proposed subsequent application rates. Acceptable nutrient management requirements shall be included in the management practices plan for all sites proposed for frequent at-agronomic application rates (9VAC25-32-680).

(5) Frequent below-agronomic application rate involves frequent applications of biosolids on permanent pasture or hay at less than the PAN requirement listed in Table

10. Frequent below-agronomic application rates shall be calculated using one of the following options:

(a) A maximum of 70% of the nitrogen requirement of the permanent pasture or hay crop can be applied on an annual basis. The 70% application rate shall be calculated after accounting for the previous two years' applied biosolids nitrogen mineralization rates.

(b) A maximum of 50% of the nitrogen requirement of the permanent pasture or hay crop can be applied on an annual basis. It is not necessary to account for the previous two years' applied biosolids nitrogen mineralization rates under this option.

For systems designed for frequent below-agronomic rates, surface and groundwater monitoring shall not be required. Soil phosphorus levels shall be considered in the design of proposed subsequent application rates. No application shall be made between September 15 and March 15 on warm-season grasses and alfalfa.

b. Standard slopes and topography. Management practices specifying uniform application of biosolids at approved rates should be established in accordance with standard slopes. Agronomic practices and crop growth on sites with slope of not greater than 7.0% will provide acceptable protection of surface water quality during the active growing season. If biosolids are applied to site slopes greater than 7.0% during the period of November 16 of one year to March 15 of the following year certain best management practices (BMP's) should be utilized (see subdivision 3 c (1) of this subsection). Biosolids should be directly injected into soils on sites exhibiting erosion potential unless other best management practices are utilized to minimize soil erosion and the potential of nonpoint runoff. Biosolids shall not be applied to site slopes exceeding 15%. Biosolids shall be directly injected or incorporated (mixed within the normal plow layer within 48 hours) if: (i) applied on sites with less than 60% uniform residue cover (stalks, vines, stubble, etc.) within any portion of the site; or (ii) applied to soils during periods of time soils may be subject to frequent flooding as defined by soil survey information.

c. Operations.

(1) Field management. The application rate of all application equipment shall be routinely measured as described in an approved sludge management plan and every effort shall be made to ensure uniform application of biosolids within sites in accordance with approved maximum design loading rates. Liquid sludges shall not be applied at rates exceeding 14,000 gallons per acre, per application. Sufficient drying times shall be allowed between subsequent applications. Application vehicles should be suitable for use on agricultural land. Pasture and hay fields should be grazed or clipped to a height of

approximately four and six inches, respectively, prior to biosolids application unless the biosolids can be uniformly applied so as not to mat down the vegetative cover so that the site vegetation can be clipped to a height of approximately four inches within one week of the biosolids application. If application methods do not result in a uniform distribution of biosolids, additional operational methods shall be employed following application such as dragging with a pasture harrow, followed by clipping if required, to achieve a uniform distribution of the applied biosolids.

Surface incorporation may be required on cropland by the department, or the local monitor with approval of the department, to mitigate excessive odors when incorporation is practicable and compatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

In accordance with the management practices plan, when biosolids are applied to site slopes greater than 7.0% between the period of November 16 of one year, and March 15 of the following year, one of the following practices shall be used to prevent runoff and soil loss:

(a) Biosolids are surface applied or subsurface injected beneath an established living crop such as hay, pasture, or timely planted small grain or cover crop;

(b) Biosolids are surface applied or subsurface injected so that immediately after application the crop residue still provides at least 60% soil surface coverage; or

(c) Biosolids are applied by surface application or subsurface injection and the site is operated in compliance with an existing soil conservation plan approved by the U.S.D.A. Natural Resource Conservation Service and will remain in compliance after any subsequent tillage operation to incorporate the biosolids.

In accordance with the management practices plan if site slopes exceed 5.0% up to 7.0%, biosolids can be applied by surface application or subsurface injection followed by: (i) incorporation within 48 hours of application if crop residue still provides at least 30% soil surface coverage immediately following incorporation, or (ii) ridge tilling or chisel plowing within 48 hours of application; during the period of November 16 to March 15 of the following year. The site should be chisel plowed or ridge tilled predominately along the contour so that uniform parallel ridges of four inches or greater are created that will improve soil roughness and reduce runoff. Consideration should also be given to the use of

similar practices on slopes of 5.0% or less when feasible for applications during the late fall and winter.

(2) Restrictions. Biosolids application shall not be made during times when the seasonal high water table of the soil is within 18 inches of the ground surface. Biosolids may only be applied to snow-covered ground if the snow cover does not exceed one inch and the snow and biosolids are immediately incorporated within 24 hours of application. Liquid sludges may not be applied to frozen ground. Dry or dewatered sludges may be applied to frozen ground only if (i) site slopes are 5.0% or less; (ii) a 200-foot vegetative (i.e., at least 60% uniformly covered by stalks or other vegetation) buffer is maintained from surface water courses; and (iii) the entire application site has uniform soil coverage of at least 60% with stalks, vines, stubble, or other vegetation and the site soils are characterized as well drained.

In accordance with the management practices plan, when biosolids are land applied between March 15 and September 1, crop planting following biosolids application should occur within a 30-day period. When biosolids are applied to sites between September 1 and November 16, an agronomically justified crop capable of trapping plant available nitrogen such as small grain shall be planted within 45 days of the application of biosolids or prior to November 16, whichever comes first, or an established cool season grass sod or timely planted small grain crop shall be present. The crop planted should be capable of germination and significant growth before the onset of winter so the plant is able to use available nitrogen released by the biosolids.

On sites with a high leaching index (greater than 10) as defined by the Department of Conservation and Recreation, an established cool season grass or timely planted small grain crop should be present when biosolids are applied to such sites between November 16 and December 21 in accordance with the nutrient management plan. Biosolids should not be applied any earlier than 30 days prior to spring planting on environmentally sensitive sites in accordance with the nutrient management plan.

d. Buffer zones.

(1) Setback distances. If slopes are greater than 7.0% and biosolids will be applied between November 16 and March 15, setback distances to perennial streams and other surface water bodies shall be doubled. The location of land application of biosolids shall not occur within the following minimum buffer zone requirements:

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## Minimum Distances (Feet) to Land Application Area

<u>Adjacent Features</u>	<u>Surface Application<sup>1</sup></u>	<u>Incorporation</u>	<u>Winter<sup>2</sup></u>
<u>Occupied dwellings</u>	<u>200 ft.</u>	<u>200</u>	<u>200</u>
<u>Water supply wells or springs</u>	<u>100 ft.</u>	<u>100</u>	<u>100</u>
<u>Property lines</u>	<u>100 ft.</u>	<u>50</u>	<u>100</u>
<u>Perennial streams and other surface waters except intermittent streams</u>	<u>50 ft.</u>	<u>35</u>	<u>100</u>
<u>Intermittent streams/drainage ditches</u>	<u>25 ft.</u>	<u>25</u>	<u>50</u>
<u>All improved roadways</u>	<u>10 ft.</u>	<u>5</u>	<u>10</u>
<u>Rock outcrops and sinkholes</u>	<u>25 ft.</u>	<u>25</u>	<u>25</u>
<u>Agricultural drainage ditches with slopes equal to or less than 2.0%</u>	<u>10 ft.</u>	<u>5</u>	<u>10</u>

<sup>1</sup> Note: Not plowed or disced to incorporate within 48 hours.

<sup>2</sup> Application occurs on average site slope greater than 7.0% during the time between November 16 of one year and March 15 of the following year.

The stated buffer zones to adjacent property boundaries and drainage ditches constructed for agricultural operations may be reduced by 50% for subsurface application (includes same day incorporation) unless state or federal regulations provide more stringent requirements. Written consent of affected landowners is required to reduce buffer distances from property lines and dwellings. In cases where more than one buffer distance is involved, the most restrictive distance governs. Buffer requirements may be increased or decreased based on either site specific features, such as agricultural drainage features and site slopes, or on biosolids application procedures demonstrating precise placement methods.

(2) Extended buffer setback distances. For applications where surface applied biosolids are not incorporated, the department (or the local monitor with approval of the department) may require as a site-specific permit condition, extended buffer zone setback distances when necessary to protect odor sensitive receptors. When necessary, buffer zone setback distances from odor sensitive receptors may be extended to 400 feet or more and no biosolids shall be applied within such extended buffer zones. In accordance with 9VAC25-32-100 and 9VAC25-32-490, the board may impose standards and requirements that are more stringent when required to protect public health and the environment, or prevent nuisance conditions from developing, either prior to or during biosolids use operations.

e. Monitoring and testing. Groundwater and surface water and soils monitoring and testing may be required by the department, or the local monitor with approval of

the department for any frequent application sites (reach agronomic rate more than once in three years) for which a potential environmental or public health concern is identified by the board in accordance with this regulation (9VAC25-32-400). Groundwater monitoring and testing should not be required for infrequent application of biosolids.

C. Forestland (Silviculture). Silvicultural use includes application of biosolids to commercial timber and fiber production land, as well as federal and state forests. The forestland may be recently cleared and planted, young plantations (two-year-old to five-year-old trees) or established forest stands.

1. Sludge standards. Refer to 9VAC25-32-590 and 9VAC25-32-660 of this Article.

2. Site suitability. Site suitability requirements should conform to subdivision A 2 of this section. The soil pH should be managed at the natural soil pH for the types of trees proposed for growth.

3. Management practices.

a. Application rates. Biosolids application rates shall be in accordance with the management practices plan and information provided by the Virginia Department of Forestry.

b. Operations.

(1) Field management.

(a) High pressure spray shall not be utilized if public activity is occurring within 1,500 feet downwind of the application site. Public access to the site shall be

adequately limited or controlled following application (Article 3 (9VAC25-32-490 et seq.) of this part).

(b) The operations should only proceed when the wind velocity is less than or equal to 15 miles per hour. When high pressure spray is used windless conditions are preferred for such operations.

(c) Biosolids application vehicles should have adequate clearance to be suitable for silvicultural field use.

(d) Application scheduling should take into account high rainfall periods and periods of freezing conditions.

(e) Monitoring requirements shall be site specific and may include groundwater, surface water or soils, for frequent application sites.

(2) Buffer zones. Buffer zones should conform to those for agricultural utilization. Refer to Table 2.

D. Reclamation of disturbed land. Biosolids applied at rates exceeding the agronomic rate may reclaim disturbed land in one or more of the following ways: (i) surface or underground mining operations, (ii) the deposition of ore processing wastes, (iii) deposition of dredge spoils or fly ash in construction areas such as roads and borrow pits. Reclamation of disturbed land is within the jurisdiction of the Virginia Department of Mines, Minerals and Energy. That department should be contacted concerning issuance of a permit for these operations. The land reclamation management practices plan should be prepared with the assistance of the Virginia Department of Conservation and Recreation, the Soil Conservation Service and the Virginia Cooperative Extension Service.

1. Sludge standards. Refer to the standards of this article.

2. Site suitability. Site suitability requirements should conform to subdivision A 2 of this section. Exceptions may be considered on a case-by-case basis.

3. Management practices.

a. Application rates. The application rates shall be established in the management practices plan through recommendations provided by appropriate agencies including the Virginia Department of Mines, Minerals and Energy and the appropriate faculty of the Department of Crop and Soil Environmental Sciences of the Virginia Polytechnic Institute and State University.

b. Vegetation selection. The land should be seeded with grass and legumes even when reforested in order to help prevent erosion and utilize available plant nitrogen. The management practices plan should include information on the seeding mixture and a detailed seeding schedule.

c. Operations.

(1) The soil pH should be maintained at 6.0 or above if the cadmium level in the biosolids applied is at or above 21 mg/kg. during the first year after the initial application. Soil samples should be analyzed by a qualified laboratory. The application rate shall be limited by the most restrictive cumulative trace element loading (Table 8).

(2) Surface material should be turned or worked prior to the surface application of liquid biosolids, to minimize potential for runoff, since solids in liquid sludge can clog soil surface pores.

(3) Unless the applied biosolids are determined to be Class A or have been documented as subjected to Class I treatment, crops intended for direct human consumption shall not be grown for a period of three years following the date of the last sludge application unless the crop is tested to verify that the crop is not contaminated. No animals whose products are intended for human consumption may graze the site or obtain feed from the site for a period of six months following the date of the last biosolids application, unless representative samples of the animal products are tested after grazing and prior to marketing to verify that they are not contaminated.

## **9VAC25-32-570. Distribution and marketing.**

A. Exceptional quality. Distribution or marketing provides for the sale or distribution of exceptional quality biosolids or mixtures of Class I treated biosolids with other materials such that the mixture achieves the Class A pathogen control standard. Distribution or marketing of Class I treated biosolids that have been mixed with inert materials may be approved on a case-by-case basis. Inert materials shall not contain pathogens or attract vectors. Use of such mixtures for agricultural purposes should be evaluated through proper testing or research programs designed to access the suitability of the material for such use. Exceptional quality biosolids marketed as fertilizers or soil conditioners must be registered with the Virginia Department of Agriculture and Consumer Services. The permit applicant shall obtain such registration prior to issuance of a permit by the board for residential, agricultural, reclamation or silvicultural use.

1. Because of the high potential for public contact with distributed and marketed sludge or sludge products, only biosolids processed to meet criteria specified for Class I treatment process sequences designed to eliminate or further reduce pathogens (PFRP) shall be sold or given away for application to land. In addition, the biosolids must meet vector attraction reduction requirements, and other quality standards (Table 8) as required for the intended use.

2. Exceptional quality biosolids may be distributed and marketed in either bulk amounts (unpacked) or as a bagged product. For purposes of this regulation, a bulk use

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quantity of biosolids will be defined as a volume of that sludge product containing 15 dry tons or more of sewage sludge. Application of bulk use quantities of exceptional quality biosolids to home vegetable gardens shall not exceed an equivalent annual loading rate of approximately one pound dry weight of biosolids per square foot (garden products may constitute a significant portion of a family diet and the amount of applied biosolids cannot be specifically controlled as in agricultural use). Exceptional quality biosolids can ideally be used as soil amendments for horticulture and landscaping purposes such as:

- a. Use in potting soil mixes;
- b. Use for seed beds, for establishment of grass and other vegetation and for topdressing of existing lawns and landscape vegetation.

3. Only exceptional quality biosolids produced from an approved sludge processing facility can be distributed and marketed. Biosolids sold for use as soil amendments or fertilizers must be registered with the Virginia Department of Agriculture and Consumer Services. Approved sludge processing facilities are those facilities constructed and operated in compliance with required permits. Approved methods of Class I processing for biosolids for distribution or marketing include, but may not be limited to, the methods described in this article.

B. Permits. Any owner who proposes to distribute or market exceptional quality biosolids or materials derived from Class I biosolids (distributor), including soil additives or compost in bulk use quantities, shall be required to obtain a written approval issued by the board. The derived material shall achieve acceptable vector attraction reduction standards and contain acceptable levels of solids and pollutant concentrations in accordance with this regulation. A permit for distribution or marketing is not required provided that an operation permit has been issued for land application of the processed material as part of either an approved sludge management plan (12VAC5-585-140 H) or an approved management practices plan (12VAC5-585-240). Approval of the distribution of bulk use quantities of exceptional quality biosolids is not required for a holder of a valid permit that authorizes distribution in bulk use quantities. All requests for bulk use approval shall be directed initially to the appropriate regional office of the department. The Virginia Department of Health, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Conservation and Recreation may participate in the review of such permits involving land application. A permit for distribution of bulk use quantities of biosolids will require the submittal and review of an acceptable distribution information sheet as described in this regulation. The approval of a distribution information sheet for bulk use quantities of exceptional quality biosolids will be issued in

the form of a letter of approval of such use by the department's regional offices.

The permittee shall maintain records on the sludge processing facility operation, maintenance and laboratory testing. Records shall be maintained for all samples to include the following: (i) the date and time of sampling, (ii) the sampling methods used, (iii) the date analyses were performed, (iv) the identity of the individual obtaining each sample and the analysts, and (v) the results of all required analyses and measurements. The records shall include all data and calculations used and shall be available to the department for inspections at reasonable times. All required records shall be kept for a minimum of five years.

C. Information furnished to all users. Biosolids distributed for public use in Virginia shall have proper identification of the producer and a description of the product including an acceptable statement of quality based on representative analytical testing. This information shall be provided by the owner in either brochures for bulk distribution or by proper labeling on bagged material. Labeling requirements should be addressed in a management plan or in the operation and maintenance manual for the processing facility.

Information provided to users of marketed or distributed biosolids should note the following: (i) the nutrient content, (ii) the acceptable land application rates, (iii) the CCE value, the pH, (iv) to follow the stated directions for use, and (v) that for any uses not specified the user should contact the distributor at a listed address or telecommunications number.

D. Distribution information. Distribution information should be maintained by the sludge processing facility owner or holder of a permit for distribution or marketing (distributor) and completed by any single biosolids distributor or user receiving bulk use quantities of marketed or distributed biosolids of more than 50 cubic yards during a period of 24 consecutive hours or less. Copies of this information should be maintained by the sludge processing facility or distributor and be made available upon request by the department. These records should include the following information, as a minimum:

1. Date;
2. Name, address, and phone number of user;
3. Amount of exceptional quality biosolids obtained;
4. Location and property owner where biosolids are being used;
5. Size of area where biosolids are spread;
6. Proximity of site to closest river or water supply source; and
7. Description of site uses.

Only the information listed in subdivisions 1 through 4 of this subsection shall be necessary for submission by a biosolids distributor.

The department reserves the right to prohibit the distribution of bulk use quantities of biosolids when it appears that such distribution is being accomplished in such a manner so as to circumvent the foregoing requirements.

E. Other uses. The use of a nonhazardous sewage sludge product, such as incinerator ash, will be evaluated on a case-by-case basis as provided for by this regulation.

#### **9VAC25-32-580. Sludge disposal.**

Permits for sludge disposal practices will be issued through other state and federal regulations and are not subject to this regulation. Such practices may include:

1. Incineration. Emission quality control requirements will be established in accordance with state and federal regulations. The generated ash is required to be properly managed in accordance with local, state and federal regulations. Applicable regulatory requirements in addition to this regulation may involve permits issued by the appropriate state and federal agencies. Buffer separation requirements will be established on a site specific basis in accordance with the applicable regulations.

2. Landfill. Management of stabilized sludge suitable for topdressing of completed landfill areas will be subject to state and federal regulations. Codisposal of sludge within municipal solid waste landfills is subject to state and federal regulation. Codisposal requirements have included:

a. Stabilization treatment of sludges.

b. Dewatering of sludges by methods designed to achieve a suspended solids level of 20% or more, or a treated sludge sample passes the paint filter test standards for free water.

c. A nonhazardous declaration from the owner.

3. Lagooning (surface disposal). When these facilities are closed by burying the wastes in place, they may be considered to be surface disposal sites. A closure plan shall be provided to the appropriate agencies.

4. Dedicated sites. The primary purpose of surface disposal sites is to allow frequent long-term sludge application at a single location at amounts that exceed agronomic rates but not for the purpose of reclaiming disturbed soils. Sludge disposal operations on dedicated sites will be subject to local, state and federal regulations including site management practices. Permits will be issued through state and federal regulations to protect public health and the quality of state waters. Any dedicated site may be subject to local zoning requirements and may be recorded as a

dedicated site in the appropriate circuit court deed book (Table A-1).

#### **9VAC25-32-590. Standards for agricultural use.**

A. Standards for agricultural use of sewage sludge as biosolids have been established such that the concentrations of sludge contaminants released to the environment will not exceed the human health and environmental quality criterion for the relevant exposure pathways.

B. Agricultural use standards involve regulation of the following:

1. Sludge characteristics as determined from sampling and testing as well as control of sewer use.

2. Sludge treatment (stabilization) in relation to process design and operational controls (Table 3).

3. Site management in relation to land application of biosolids for agronomic use, including (i) operational methods, (ii) access restrictions, and (iii) buffer restrictions.

4. Crop management in relation to land application of biosolids and crop rotation, including (i) application rate determinations, and (ii) crop use restrictions.

5. Standards for biosolids characteristics including (i) nutrient concentrations, (ii) heavy metal concentrations, (iii) organic chemical concentrations, and (iv) lime content/pH characteristics.

6. Standards for processing biosolids involving treatment process sequences for (i) pathogen reduction treatment and (ii) reduction of organic matter to minimize odors and reduce vector attraction.

#### **9VAC25-32-600. Biosolids characteristics; nutrients; trace elements; organic chemicals.**

A. The primary agronomic value of biosolids, the nutrient content, shall be established prior to agricultural use. The applied nitrogen and phosphorous content of biosolids shall be limited to amounts established to support crop growth. Nitrate nitrogen developed as a result of biosolids application shall be controlled in order not to accumulate in groundwater as a pollutant. Thus, the amount of biosolids applied to land shall be restricted based on the nitrogen requirements of the crop grown on the amended site immediately following application (agronomic rate). In addition, soil erosion and site runoff should not result in phosphorous pollution of surface waters as a result of surface application of biosolids. The results of approved groundwater monitoring programs may be utilized to verify frequent application rates.

B. The heavy metal content of biosolids may restrict the application rate below the agronomic rate. However, municipal biosolids would not normally contain excessive heavy metal concentrations unless a significant amount of a

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high metal content wastewater without pretreatment is routinely discharged into the municipal system. If a biosolid contains heavy metal concentrations below the ceiling values listed in Table 7, or is processed and evaluated as exceptional quality biosolids, the application rate for agricultural use shall be unrestricted up to the agronomic rate for infrequent applications. The accumulated amount of trace elements can restrict the application rate for frequent applications of biosolids.

C. Municipal biosolids can contain synthetic organic chemicals from industrial wastewater contributions and disposal of household chemicals and pesticides. Municipal biosolids typically contain very low levels of these compounds; however, biosolids may be required to be tested for certain toxic organic compounds prior to agricultural use (Table 12). If performed and validated, these test results shall be utilized to evaluate the maximum allowable annual loading rate for the tested biosolids. If analytical test results verify that biosolids contains levels of organic chemicals exceeding concentration limits incorporated in federal regulations or standards, appropriate restrictions shall be imposed for agricultural use of that biosolid.

## **9VAC25-32-610. Biosolids treatment.**

A. Stabilization. Biosolids treatment processes are primarily designed to increase the solids content of the biosolids by separation and removal of liquid and are designed to stabilize the solid fraction through biochemical conversions that inactivate pathogens and reduce vector attraction characteristics and the potential for odor production. Such treatment should be designed to improve the characteristics of the biosolids for a particular use/disposal practice, increase the economic viability of using a particular practice and reduce the potential for public health, environmental and nuisance problems.

B. Class I treatment. Class I treatment may be achieved by process sequences to further reduce (PFRP) or eliminate pathogens, i.e., Class A pathogen control. Class I treatment methods reduce all pathogens potentially contained in biosolids or septage to a level below specified limits (Table 3). Class A microbiological standards and an acceptable solids content shall be achieved at the time biosolids are used or prepared for distribution or marketing in accordance with the appropriate management practices specified in this regulation. Class I treatment processes should include one or more of the following operations:

1. Heat treatment. The temperature of the biosolids that is used or disposed is maintained at a specific value for a specified period of time:

a. When the percent solids of the biosolids is 7.0% or higher, the temperature of the biosolids shall be 50°C or higher; the time period shall be 20 minutes or longer; and the temperature and time period shall be determined

using equation B-1, except when small particles of biosolids are heated by either warmed gases or an immiscible liquid.

$$\text{Equation B-1: } D1 = (131,700,000) / 10(\exp 0.1400(t))$$

Where,

D1 = time in days that biosolids temperature is t or more

t = Biosolids temperature in degrees Celsius (°C).

exp = exponent or power that Base 10 is raised to.

b. When the percent solids of the biosolids is 7.0% or higher and small particles of biosolids are heated by either warmed gases or an immiscible liquid, the temperature of the biosolids shall be 50°C or higher; the time period shall be 15 seconds or longer; and the temperature and time period shall be determined using equation B-1.

c. When the percent solids of the biosolids is less than 7.0% and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using equation B-1.

d. When the percent solids of the biosolids is less than 7.0% the temperature of the biosolids is 50°C or higher; and time period is 30 minutes or longer, the temperature and time period shall be determined using equation B-2.

$$\text{Equation B-2: } D2 = (50,070,000) / 10(\exp 0.1400(t))$$

Where,

D2 = time in days that biosolids temperature is t or more

t = Biosolids temperature in degrees Celsius (°C).

e. The temperature of the biosolids is maintained at 70°C or higher for a time period of 30 minutes or longer (Pasteurization).

2. Heat drying. A process wherein dewatered biosolids cake is dried by direct or indirect contact with hot gases and the biosolids moisture content is reduced to 10% or lower. Direct drying is achieved when the biosolids particles reach temperatures of 80°C or higher. Indirect drying may involve the temperature of the gas stream measured at the point where the gas stream leaves the dryer. Indirect drying may be achieved when the wetbulb temperature of the gas stream leaving the dryer is in excess of 80°C or the biosolids particles reach temperatures of 80°C or higher.

3. Thermophilic composting. A process using the within-vessel composting method that maintains a treated biosolids temperature of 55°C or greater for three days. A process using the static aerated pile composting method that maintains a treated biosolids temperature of 55°C or greater for three days. A process using the windrow composting method that maintains a treated biosolids

temperature at 55°C or greater for at least 15 days during the composting period, and during the indicated high temperature period, there is a minimum of five turnings of the windrow. Operating temperatures are measured at the depth of 30 cm from the surface of the compost mixture. As thermophilic composting processes are less efficient in destroying pathogens than other disinfection processes an additional storage of processed compost up to 30 days or more may be necessary to achieve an adequate level of vector attraction reduction as verified by testing prior to final disposition (Table 3).

4. Thermophilic aerobic digestion. Liquid biosolids consisting of 50% or more waste biological liquid by dry weight, is agitated with air or oxygen to maintain one mg/l or more dissolved oxygen at mid-depth, during a mean cell residence time of 10 days or more at 55°C or more.

5. Alkaline (PFRP) stabilization. Thorough blending of an alkaline additive to digested biosolids in sufficient quantities to produce a mixture pH of 12 or more for a period of 72 hours or more with one of the following: (i) mixture temperature of 55°C for a minimum period of 12 hours, or (ii) mixture temperature of 70°C or more for a minimum period of 30 minutes or more. Such treatment may be followed by storage for an acceptable period of time to dry the mixture to an adequate dry solids content. Alkaline addition to undigested biosolids will be considered on a case-by-case basis with extensive monitoring used to verify the level of pathogen control achieved.

6. Chlorine oxidation. A process of introducing high doses of chlorine (1,000 mg/l to 3,000 mg/l) into the biosolids stream under low pressure (30 psig or more) producing a biosolids pH of four or less in order to achieve Class A microbiological standards (Table 3), followed by acceptable drying to achieve a suspended solids content of 30% or more.

7. Alternative equivalent stabilization processes. The process operating parameters for alternative equivalent stabilization processes (PFRP) should be addressed, case-by-case, based on department evaluation of the results of adequate monitoring and testing programs (Table 3), with input from the USEPA staff, i.e., the Pathogen Equivalency Committee.

C. Class II treatment. Class II treatment may be achieved by process sequences to significantly reduce pathogens (PSRP), i.e., Class B pathogen control. Class II treatment methods reduce bacteria (fecal coliform, fecal streptococci, enterococci) found in the treated biosolids or septage 1 log or more (32 fold) below the densities found in the raw biosolids to achieve a density of (6.3 log<sub>10</sub> per gram of total solids or less (Table 3)). Class B microbiological standards shall be achieved at the time the biosolids are removed and

transported for land application in accordance with the management practices specified. Class II treatment processes may include one or more of the following operations:

1. Anaerobic digestion. A process whereby biosolids are maintained in an anaerobic environment for a mean cell residences period ranging from 60 days at 20°C to 15 days at 35°C.

2. Aerobic digestion. A process of agitating biosolids with air or oxygen to maintain aerobic conditions for a mean cell residence period ranging from 60 days at 15°C to 40 days at 20°C.

3. Low-temperature composting. A process using the within-vessel, aerated static pile or windrow composting methods, whereby the temperature of treated biosolids is maintained at a minimum of 40°C for five days. For four hours during this period the operating temperature of the treated biosolids exceeds 55°C. Additional storage of processed compost for 30 days or more may be necessary to provide the necessary level of vector attraction reduction prior to final disposition.

4. Alkaline (PSRP) stabilization. A process where sufficient alkaline additive is blended with unstabilized biosolids to produce a minimum mixture pH of 12 after two hours of contact and a pH of 11.5 or more for 22 additional hours or more, with storage for a period sufficient to produce an acceptable dry solids content as necessary for the method of final disposition.

5. Air drying. Biosolids treated by methods similar to those listed above, but not meeting Class II treatment standards are dried on sand beds or in basins with underdrains for a minimum period of three months, during which time the ambient daily temperature exceeds 0°C and dried biosolids are produced.

D. Additional treatment methods to provide disinfection of treated biosolids. Pathogen treatment processes may be enhanced by providing additional treatment methods to eliminate parasitic worms and ova (EH process sequence). Any of the processes listed below, if added to stabilization processes described previously, will further lower pathogens. Because these processes when used alone do not reduce nuisance odors and the attraction of vectors, they are considered to be supplementary to typical stabilization and pathogen treatment processes.

1. Beta ray irradiation. A process involving the irradiation of biosolids with beta rays at dosages of at least one megarad at 20°C.

2. Gamma ray irradiation. A process involving the irradiation of biosolids with gamma rays from certain isotopes, such as 60Cobalt and 137Cesium, at dosages of at least 1.0 megarad at 20°C.

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E. Vector attraction reduction parameters. One of the appropriate vector attraction reduction requirements shall be achieved and Class A or B pathogen control obtained when bulk biosolids are applied to agricultural land, forest, a public contact site, reclamation site, lawn or home gardens. One of the appropriate vector attraction reduction requirements shall be met when Class A biosolids are sold or given away in a bag or other container for application to the land. The following operational methods will achieve the necessary vector attraction reduction requirements:

1. The mass of volatile solids in the biosolids shall be reduced by a minimum of 38% (see calculation procedures in "Environmental Regulations and Technology-Control of Pathogens and Vector Attraction in Biosolids," EPA-625/R-92/013, 1992, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268).

2. When the 38% volatile solids reduction cannot be met for an anaerobically digested biosolid, vector attraction reduction can be demonstrated by digesting a portion of the originally digested biosolids anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30°C and 37°C. When at the end of the 40 days, the volatile solids in the biosolids at the beginning of that period is reduced by less than 17%, adequate vector attraction reduction is considered demonstrated for the originally digested biosolids.

3. When the 38% volatile solids reduction requirement cannot be met for an aerobically digested biosolid, vector attraction reduction can be demonstrated by digesting a portion of the originally digested biosolids that has a percent solids of 2.0% or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20°C. When at the end of the 30 days, the volatile solids in the biosolids at the beginning of that period is reduced by less than 15%, adequate vector attraction reduction is considered demonstrated for the originally digested biosolids.

4. The specific oxygen uptake rate (SOUR) for biosolids treated in a Class II or better aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20°C.

5. Biosolids shall be treated in a Class II or better aerobic process for 14 days or longer. During that time, the temperature of the biosolids shall be higher than 40°C and the average temperature of the biosolids shall be higher than 45°C.

6. The pH of treated biosolids shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours. Alkaline stabilization of untreated biosolids shall be evaluated on a case-by-case basis.

7. The percent solids of treated biosolids that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials.

8. The percent solids of treated biosolids that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials.

9. For biosolids that are surface applied and incorporated, or injected, below the surface of the land:

a. No significant amount of the biosolids shall be present on the land surface within one hour after the biosolids are injected.

b. When the biosolids that are injected below the surface of the land are Class A with respect to pathogens, the biosolids shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

c. Biosolids applied to the land surface shall be incorporated into the soil within six hours after application to or placement on the land.

d. When biosolids that are incorporated into the soil are Class A with respect to pathogens, the biosolids shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

10. The pH of untreated domestic septage applied to land shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes prior to application.

## **9VAC25-32-620. Site access time restrictions.**

A. Unrestricted access (UA). Biosolids that have undergone Class I treatment to achieve Class A pathogen control may be applied or incorporated into the soil of agricultural lands and immediate public access is permitted. A waiting period is required up to 30 days following application (to allow adhering biosolids to be washed from the foliar portion of the plants by precipitation). This waiting period is required before (i) crops are harvested for human consumption, or (ii) domestic animals are allowed to graze on the site.

B. Restricted access (RA). Following application or incorporation of biosolids that have undergone Class II treatment to achieve Class B pathogen control public access and crop management shall be restricted as follows: (i) access to any site with a high potential for contact with the ground surface (public use) by the general public shall be controlled for a minimum time period of one year, (ii) access to agricultural sites and other sites with a low potential for public exposure shall be controlled for 30 days, (iii) food

crops with harvested parts that touch the biosolids/soil mixture and are not totally above the land surface shall not be harvested for 14 months, (iv) food crops with harvested parts below the surface of the land shall not be harvested for 20 months following application, when the biosolids remain on the land surface for four months or longer prior to incorporation into the soil, (v) food crops with subsurface harvested parts shall not be harvested for 38 months following application, when the biosolids remain on the land surface less than four months prior to incorporation, (vi) feeding of harvested crops to animals shall not take place for a total of one month following surface application (two months for lactating dairy livestock), (vii) grazing by animals whose products will or will not be consumed by humans is prevented for at least 30 days (60 days for lactating dairy livestock), and (viii) harvesting turf grass for placement on land with a high potential for public exposure or a lawn is prevented for 12 months.

C. Modified Access (MA). If a biosolids processing sequence is used to treat PSRP or PSLP biosolids that eliminates or inactivates helminth eggs (EH), public use access restrictions are reduced to six and eight months respectively, which shall include two summer months. A summary listing of access restrictions is presented in Table 9.

### **9VAC25-32-630. Biosolids management for nitrogen loading.**

A. Crop uptake guidelines. 9VAC25-32-560 B 3 states that application rates shall be approved by the board and that nitrogenous substances are often the limiting factoring determining these application rates. The applicant is responsible for providing site specific biosolids loading rates on a field-by-field basis. In cases where nitrogen is the rate limiting constituent, such rates may be justified by determining the predominant soil type in a field and then correlating the appropriate soil productivity group and nitrogen requirement for the proposed crop. Soil test recommendations developed through the Virginia Polytechnic Institute and State University or the Virginia Water Conservation, Department of Conservation and Recreation may be used for such purposes. Table 10 summarizes the correlation between nitrogen requirement and productivity class for several crops grown and harvested in Virginia. The applicant may also justify site-specific loading rates by documenting historic crop yield records (average of three highest yields in five years of record) or by written verifications from the Virginia Polytechnic Institute and State University, the Cooperative Extension Service or Department of Conservation and Recreation Nutrient Management Specialist. Written verification shall accompany a request for higher yield goals than those posted in Table 10.

B. Application rate calculations. For biosolids application, a nitrogen balance must be evaluated to determine the acceptable loading rate. For frequent biosolids application,

the evaluation will require an assessment of biosolids mineralization rates for organic nitrogen present in the biosolids for the year it is applied as well as residual organic nitrogen that will be mineralized from previous years' biosolids application. Table 11 summarizes acceptable organic nitrogen mineralization rates and ammonia volatilization rates for various types of biosolids and should be used in computing acceptable nitrogen loading rates unless information is provided to justify other rates. The nitrogen application rate on sites registered in the conservation reserve plan should be established in accordance with those land use restrictions. The application rates for treated septage shall be developed using equation 1 contained in Table 12-B.

### **9VAC25-32-640. Maximum application rates for trace elements.**

The maximum cumulative application of cadmium and other biosolids borne trace elements to soils used for crop production is summarized in Table 8. Parameters other than those listed in Tables 8, 9 and 14 can be used to evaluate the application rate of biosolids in accordance with current EPA technical regulations. Exceptional quality biosolids applied to lawns or home gardens in residential areas shall be of such quality so as to conform with the pollutant levels specified in Table 7-B.

### **9VAC25-32-650. Maximum application rates for high lime biosolids.**

Application rates for alkaline stabilized biosolids may be restricted in accordance with the soil pH buffer capacity, as determined by commercial and state soil testing laboratories. The application of biosolids will affect soil pH. Unless properly controlled, high rates of calcium carbonate equivalence (i.e., CCE, which is a factor that relates the liming potential of biosolids to calcium carbonate limestone) application can have an adverse effect on crop productivity by increasing the soil pH beyond the range optimum for maximum crop production. Agricultural use of biosolids with high CCE content should be controlled to correspond with current agricultural liming practices. Calcium carbonate equivalent loadings should not exceed rates designed to attain soil pH values in the plow layer above 6.5 for soils located in the coastal plain and above 6.8 for soils located in other areas of the state.

### **9VAC25-32-660. Maximum application rates for biosolids.**

If soils exhibit very high soil test phosphorus of 55 or more parts per million phosphorus (Mehlich I analytical test procedure or equivalent procedure approved by the Department of Conservation and Recreation), the maximum application rates for phosphorus contained in biosolids together with phosphorus contained in other applied nutrient sources to the site and all applicable phosphorus management

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practices shall be consistent with the nutrient management plan.

TABLE 7

A. RECOMMENDED CEILING LIMITS FOR THE TRACE ELEMENT CONTENT OF BIOSOLIDS ACCEPTABLE FOR LAND APPLICATION

<u>TRACE ELEMENT</u>	<u>CONCENTRATION IN MILLIGRAMS PER KILOGRAMS (DRY WEIGHT)</u>
<u>Arsenic</u>	<u>75</u>
<u>Cadmium</u>	<u>85</u>
<u>Copper</u>	<u>4300</u>
<u>Lead</u>	<u>840</u>
<u>Mercury</u>	<u>57</u>
<u>Molybdenum</u>	<u>75</u>
<u>Nickel</u>	<u>420</u>
<u>Selenium</u>	<u>100</u>
<u>Zinc</u>	<u>7500</u>

B. MAXIMUM MONTHLY AVERAGE TRACE ELEMENT CONCENTRATIONS FOR APPLICATION OF EXCEPTIONAL QUALITY BIOSOLIDS TO LAWNS OR HOME GARDENS IN RESIDENTIAL LOCATIONS

<u>TRACE ELEMENT</u>	<u>CONCENTRATION IN MILLIGRAMS PER KILOGRAMS (DRY WEIGHT)</u>
<u>Arsenic<sup>(1)</sup></u>	<u>41</u>
<u>Cadmium</u>	<u>39</u>
<u>Copper</u>	<u>1500</u>
<u>Lead</u>	<u>300</u>
<u>Mercury</u>	<u>17</u>
<u>Molybdenum<sup>(1)</sup></u>	
<u>Nickel</u>	<u>420</u>
<u>Selenium</u>	<u>100</u>
<u>Zinc</u>	<u>2800</u>

Note: <sup>(1)</sup>The monthly average concentration is currently under study by USEPA.

TABLE 8

MAXIMUM CUMULATIVE APPLICATION OF BIOSOLIDS TRACE ELEMENTS THAT CAN BE APPLIED TO SOILS USED FOR CROP PRODUCTION<sup>(1)</sup>

<u>TRACE ELEMENT</u>	<u>Kg/ha</u>	<u>(lbs/AC)</u>
<u>Arsenic<sup>(2)</sup></u>	<u>41</u>	<u>(36)</u>
<u>Cadmium</u>	<u>39</u>	<u>(35)</u>
<u>Copper</u>	<u>1,500</u>	<u>(1,340)</u>
<u>Lead</u>	<u>300</u>	<u>(270)</u>
<u>Mercury</u>	<u>17</u>	<u>(16)</u>
<u>Molybdenum<sup>(2)</sup></u>		
<u>Nickel</u>	<u>420</u>	<u>(375)</u>
<u>Selenium</u>	<u>100</u>	<u>(89)</u>
<u>Zinc</u>	<u>2,800</u>	<u>(2,500)</u>

Notes: <sup>(1)</sup>Such total applications to be made on soils with the biosolids/soil mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil background pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.

<sup>(2)</sup>The maximum cumulative application is currently under study by USEPA.

TABLE 9

COMPARISONS OF TIME RESTRICTIONS FOLLOWING COMPLETION OF BIOSOLIDS APPLICATION ASSOCIATED WITH CLASS II TREATMENT LEVELS

<u>Type of Application</u>	<u>Surface<sup>(1)</sup></u>	<u>Incorporated<sup>(2)</sup></u>
<u>Control of Access for Public Use<sup>(3)</sup></u>	<u>12 Months</u>	<u>12 Months</u>
<u>Time lapse required before above ground food crops with harvested parts that touch the biosolids/soil mixture can be harvested.</u>	<u>14 Months</u>	<u>14 Months</u>
<u>Time lapse before food crops with</u>	<u>20 Months</u>	<u>38 Months</u>

harvested parts below the land surface can be harvested

Harvesting food crops, feed crops and fiber crops

1 Month

1 Month

Grazing and feeding harvested crops to animals whose products are consumed by humans<sup>(4)</sup>

1 Month

1 Month

Grazing of farm animals whose products are not consumed by humans

1 Month

1 Month

Harvesting turf for placement on land with a high potential for public exposure or a lawn<sup>(5)</sup>

12 Months

12 Months

Notes: <sup>(1)</sup>Remains on land surface for four months or longer prior to incorporation.

<sup>(2)</sup>Remains on land surface for less than four months prior to incorporation.

<sup>(3)</sup>Public access to agricultural sites and other sites with a low potential for direct contact with the ground surface shall be controlled for 30 days.

<sup>(4)</sup>The restriction for lactating dairy cows is two months.

<sup>(5)</sup>This time restriction must be met unless otherwise specified by the permitting authority.

TABLE 10

NITROGEN REQUIREMENTS FOR AGRONOMIC RATES

A. RECOMMENDED PLANT AVAILABLE NITROGEN (PAN) APPLICATION RATES IN POUNDS OF NITROGEN (N) PER ACRE FOR VARIOUS NONIRRIGATED CROPS GROWN ON SOILS RECEIVING INFREQUENT BIOSOLIDS APPLICATIONS<sup>(1)</sup>

	Soil Productivity Group								
	I		II		III		IV		V
	A	B	A	B	A	B	A	B	
<u>Crop</u>	<u>lbs N/acre</u>								
<u>Corn grain</u>	<u>180</u>	<u>170</u>	<u>160</u>	<u>150</u>	<u>140</u>	<u>130</u>	<u>120</u>	<u>100</u>	<u>80</u>
<u>Corn silage</u>	<u>200</u>	<u>185</u>	<u>175</u>	<u>165</u>	<u>155</u>	<u>145</u>	<u>130</u>	<u>110</u>	<u>90</u>
<u>Grain sorghum</u>	<u>140</u>	<u>130</u>	<u>120</u>	<u>110</u>	<u>100</u>	<u>90</u>	<u>90</u>		<u>80</u>
<u>Full season Soybeans<sup>(2)</sup></u>	<u>160 to 180</u>	<u>150 to 170</u>	<u>140 to 160</u>	<u>130 to 150</u>	<u>120 to 140</u>	<u>110 to 130</u>	<u>100 to 120</u>	<u>85 to 105</u>	<u>65 to 85</u>
<u>Canola<sup>(3)</sup></u>	<u>100</u>		<u>90</u>		<u>80</u>		<u>60</u>		<u>60</u>
<u>Wheat</u>	<u>100</u>		<u>90</u>		<u>80</u>		<u>60</u>		<u>60</u>
<u>Barley</u>	<u>90</u>		<u>80</u>		<u>80</u>		<u>60</u>		<u>60</u>
<u>Rye</u>	<u>75</u>		<u>75</u>		<u>75</u>		<u>75</u>		<u>75</u>
<u>Oats</u>	<u>80</u>		<u>80</u>		<u>80</u>		<u>60</u>		<u>60</u>

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<u>Tallgrass hay</u> <sup>(4)</sup>	<u>250</u>	<u>250</u>	<u>200</u>	<u>160</u>	<u>160</u>
<u>Bermudagrass hay</u>	<u>240 - 300</u>	<u>240 - 300</u>	<u>210 - 260</u>	<u>210 - 260</u>	<u>210 - 260</u>
<u>Pasture Fescue/Orchardgrass</u> <sup>(5)</sup>	<u>120</u>	<u>120</u>	<u>100</u>	<u>80</u>	<u>80</u>
<u>Bermudagrass pasture</u> <sup>(7)</sup>	<u>175 - 225</u>	<u>175 - 225</u>	<u>120 - 180</u>	<u>120 - 180</u>	<u>120 - 180</u>
<u>Alfalfa</u> <sup>(7)</sup>	<u>300</u>	<u>300</u>	<u>210</u>	<u>150</u>	<u>150</u>
<u>Sudangrass, sudan-sorghum, millet</u> <sup>(6)</sup>	<u>70</u>	<u>70</u>	<u>70</u>	<u>70</u>	<u>70</u>
<u>Stockpiled tall fescue (summer application by August 15)</u>	<u>60 - 100</u>	<u>60 - 100</u>	<u>50 - 80</u>	<u>50 - 80</u>	<u>50 - 80</u>

Notes: <sup>(1)</sup>For proposed use of crops or PAN rates (lbs/A) not included in the following tables, adequate yield and PAN Data are to be submitted in accordance with Article 4 (9VAC25-32-670 et seq.) of this part.

<sup>(2)</sup>For doublecrop or late beans planted after 6/21 (of any year) allowable PAN rates are the lowest of the listed values, as rounded to nearest factor of 10.

<sup>(3)</sup>For fall application rate may sidedress up to 60 lbs fertilizer N/acre in late February before spring growth begins.

<sup>(4)</sup>Apply listed PAN rate when application occurs between 3/1 and 9/30 in any year and apply only one-half of listed PAN rates if application will occur between 10/1 of any year and 2/28 of the following year, with remaining PAN applied after 3/1 of that following year.

<sup>(5)</sup>For frequent applications apply 60 lbs PAN/acre per year. Following infrequent application rate, subsequent frequent applications should be adjusted on a case-by-case basis, accounting for residual from other wastes and crops (Part IV, Table A-2).

<sup>(6)</sup>Sudangrass, sudan-sorghum and pearl millet may receive a PAN rate of 120 lbs/A if the application occurs between 3/1 and 6/1 of any year and two cuttings are to be made, weather permitting. For Foxtail or German Millet, cut only once, application will be limited to a PAN rate of 70 LBS/A.

<sup>(7)</sup>From 7/1 through 9/14, applications to Bermuda grass hay or alfalfa shall only be applied at 50% of the listed rate

## B. ESTIMATED YIELDS IN BUSHEL (bu) OR TONS (T) PER ACRE (A) OF VARIOUS NONIRRIGATED CROPS FOR IDENTIFIED SOIL PRODUCTIVITY GROUPS

<u>Crop</u>	<u>I</u>		<u>II</u>		<u>III</u>		<u>IV</u>		<u>V</u>
	<u>A</u>	<u>B</u>	<u>A</u>	<u>B</u>	<u>A</u>	<u>B</u>	<u>A</u>	<u>B</u>	
<u>Corn Grain (bu/A)</u>	<u>180</u>	<u>170</u>	<u>160</u>	<u>150</u>	<u>140</u>	<u>130</u>	<u>120</u>	<u>100</u>	<u>80</u>
<u>Corn Silage (T/A)</u>	<u>25.4</u>	<u>24.4</u>	<u>23.4</u>	<u>22.5</u>	<u>21.5</u>	<u>20.5</u>	<u>19.5</u>	<u>17.5</u>	<u>15.6</u>
<u>Grain Sorghum (bu/A)</u>	<u>140</u>	<u>130</u>	<u>120</u>	<u>110</u>	<u>100</u>	<u>90</u>	<u>90</u>		<u>80</u>
<u>Soybeans (bu/A)</u>									
<u>Early season</u>	<u>50</u>	<u>45</u>	<u>40</u>		<u>35</u>		<u>25</u>		<u>20</u>
<u>Late season</u> <sup>(8)</sup>	<u>40</u>	<u>34</u>	<u>34</u>	<u>30</u>	<u>25</u>		<u>18</u>		<u>15</u>
<u>Canola</u> <sup>(9)</sup>	<u>UNDETERMINED AT THIS TIME</u>								
<u>Wheat (bu/A)</u>									
<u>Standard</u>	<u>64</u>		<u>56</u>		<u>48</u>		<u>40</u>		<u>24</u>
<u>Intensive</u>	<u>80</u>		<u>70</u>		<u>60</u>		<u>50</u>		<u>30</u>

<u>Barley (bu/A)</u>					
<u>Standard</u>	<u>110</u>	<u>70</u>	<u>60</u>	<u>50</u>	<u>30</u>
<u>Intensive</u>	<u>115</u>	<u>88</u>	<u>75</u>	<u>63</u>	<u>38</u>
<u>Oats</u>	<u>80</u>	<u>80</u>	<u>80</u>	<u>60</u>	<u>60</u>
<u>Tallgrass hay (T/A)</u>	<u>&gt;4.0</u>	<u>3.5 - 4.0</u>	<u>3.5 - 4.0</u>	<u>3.0 - 3.5</u>	<u>&lt;3.0</u>
<u>Bermudagrass hay (T/A)</u>	<u>&gt;6.0</u>	<u>5.0 - 6.0</u>	<u>4.0 - 5.0</u>	<u>3.0 - 4.0</u>	<u>&lt;3.0</u>
<u>Alfalfa (T/A)</u>	<u>&gt;6.0</u>	<u>4.0 - 6.0</u>	<u>&lt;4.0</u>	<u>&lt;4.0</u>	<u>&lt;4.0</u>

Notes: <sup>(8)</sup>Late season beans would be planted on or after 6/21 of that year.

<sup>(9)</sup>Sufficient yield data not currently available.

C. RESIDUAL PLANT AVAILABLE NITROGEN (PAN) REMAINING FROM GROWTH OF VARIOUS LEGUMES DURING THE PREVIOUS YEAR<sup>(10)</sup>

<u>Crop</u>	<u>%Stand</u>	<u>Yield Description</u>	<u>Residual Pan (lbs/A)</u>
<u>Alfalfa</u>	<u>50-75</u>	<u>Good (&gt;4T/A)</u>	<u>90</u>
	<u>25-49</u>	<u>Fair (3-4T/A)</u>	<u>70</u>
	<u>&lt;25</u>	<u>Poor (&lt;3T/A)</u>	<u>50</u>
<u>Red Clover</u>	<u>&gt;50</u>	<u>Good (&gt;3T/A)</u>	<u>80</u>
	<u>25-49</u>	<u>Fair (2-3T/A)</u>	<u>60</u>
	<u>&lt;25</u>	<u>Poor (&lt;2T/A)</u>	<u>40</u>
<u>Hairy Vetch</u>	<u>80-100</u>	<u>Good</u>	<u>100</u>
	<u>50-79</u>	<u>Fair</u>	<u>75</u>
	<u>&lt;50</u>	<u>Poor</u>	<u>50</u>
<u>Peanuts</u>			<u>45</u>
<u>Soybeans</u>			<u>20<sup>(11)</sup></u>

Notes: <sup>(10)</sup>The residual PAN values must be subtracted from the PAN values listed in Table A of this section to determine biosolids application rates following growth of legume crops the previous year.

<sup>(11)</sup>Where yield data is available utilize 0.5 pounds per bushel.

TABLE 11  
A. ESTIMATED NITROGEN MINERALIZATION RATES FOR BIOSOLIDS

<u>Biosolids Type</u>	<u>Application Year<sup>(1)</sup></u>			
	<u>0-1</u>	<u>1-2</u>	<u>2-3</u>	<u>3-4</u>
<u>Lime Stabilized</u>	<u>0.30</u>	<u>0.10</u>	<u>0.10</u>	<u>0.05</u>
<u>Aerobic digestion</u>	<u>0.30</u>	<u>0.10</u>	<u>0.10</u>	<u>0.05</u>

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<u>Anaerobic digestion</u>	<u>0.30</u>	<u>0.10</u>	<u>0.10</u>	<u>0.05</u>
<u>Composted<sup>(2)</sup></u>	<u>0.10</u>	<u>0.05</u>	<u>0.03</u>	<u>0.00</u>

Notes: <sup>(1)</sup>To determine nitrogen available from previous biosolids applications, multiply the initial organic nitrogen analysis by the appropriate mineralization factor.

<sup>(2)</sup>Total organic nitrogen content of 2.0% or less and no significant ammonia nitrogen.

## B. ESTIMATED BIOSOLIDS AMMONIA NITROGEN AVAILABILITY FACTORS BASED ON EXPECTED VIOLATILIZATION RATES FOR BIOSOLIDS

<u>Method of Application</u>	<u>Availability Factor<sup>(1)</sup></u>	
	<u>Biosolids pH Less than 10</u>	<u>Biosolids pH Greater than 10</u>
<u>Injection below surface</u>	<u>1.0</u>	<u>1.0</u>
<u>Surface application with/</u>		
<u>--Incorporation within 24 hours</u>	<u>0.85</u>	<u>0.75</u>
<u>--Incorporation within 1-7 days</u>	<u>0.70</u>	<u>0.50</u>
<u>--Incorporation after 7 days</u>	<u>0.50</u>	<u>0.25</u>

<sup>(1)</sup>To determine the plant-available biosolids ammonium nitrogen in the soil, multiply the biosolids ammonium nitrogen concentration or total weight applied by the appropriate availability factor.

TABLE 12

### A. ORGANIC CHEMICAL TESTING THAT MAY BE REQUIRED TO IDENTIFY AN EXCEPTIONAL QUALITY BIOSOLIDS

Organic Chemicals

Aldrin/dieldrin (total)

Benzo (a) pyrene

Chlordane

DDT/DDE/DDD (total) (1)

Dimethyl nitrosamine

Heptachlor

Hexachlorobenzene

Hexachlorobutadiene

Lindane

Polychlorinated biphenols

Toxaphene

Trichloroethylene

(1)Note: DDT 2,2--Bis (chlorophenyl)--1,1,1--Trichloroethane

DDE 1,1--Bis (chlorophenyl)--2,2--Dichloroethane

DDD 1,1--Bis (chlorophenyl)--2,2--Dichloroethane

B. THE RECOMMENDED APPLICATION RATE FOR DOMESTIC SEPTAGE APPLIED TO AGRICULTURAL LAND, FOREST, OR A RECLAMATION SITE SHALL NOT EXCEED THE ANNUAL APPLICATION RATE CALCULATED USING THE FOLLOWING EQUATION:

$$\text{AAR} = \text{N} / (0.0026)$$

Where:

AAR = Annual application rate in gallons per acre per 365-day period.

N = Amount of nitrogen in pounds per acre per 305-day period needed by the crop or vegetation grown on the land.

Article 4

Permit Application Information for Biosolids Use

**9VAC25-32-670. Minimum information required for a management practices plan utilizing land application.**

A. General information.

1. Legal Name and Address: The legal name of the owner making application for a permit is to appear on the title page or in the opening paragraph or both. Both the mailing and physical address should be included.

2. Owner Contact: The name, title, address, and telephone number of the individual to be contacted regarding this application should be furnished.

3. A general description of the proposed plan including name and location of generators and owners involved and copies of agreements developed, biosolids quality, biosolids treatment and handling processes, means of biosolids transport or conveyance, location and volume of storage proposed, general location of sites proposed for application and methods of biosolids application proposed. A description of temporary storage methods should be provided.

4. Written permission of landowners and farmers on a form approved by the board and pertinent lease agreements as may be necessary for operation of the treatment works.

5. Methods for notification of local government and obtaining compliance with local government zoning and applicable ordinances.

6. A copy of a letter of approval of the nutrient management plan for the operation from the Department of Conservation and Recreation if required in 9VAC25-32-680 A 3.

B. Design information.

1. Biosolids characterization.

a. Amounts and volumes to be handled.

b. Biosolids laboratory analytical data of a representative number of samples of biosolids in accordance with the guideline specified in accordance with Tables 2 and 3. Statement that the biosolids is nonhazardous, documentation statement for treatment and quality and description of how treated biosolids meets other standards in accordance with this regulation.

2. Plans and specifications for storage facilities of all biosolids to be handled, including routine and emergency storage, shall be submitted for the issuance of a certificate to construct and a certificate to operate in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790) and shall depict the following information:

a. Site layout on a recent 7.5 minute topographic quadrangle or other appropriate scaled map with the following information.

(1) Location of any required soil, geologic and hydrologic test holes or borings will be submitted.

(2) Location of the following field features within 0.25 miles of the site boundary (indicate on map) with the approximate distances from the site boundary.

(a) Water wells (operating or abandoned).

(b) Surface waters.

(c) Springs.

(d) Public water supplies.

(e) Sinkholes.

(f) Underground and/or surface mines.

(g) Mine pool (or other) surface water discharge points.

(h) Mining spoil piles and mine dumps.

(i) Quarries.

(j) Sand and gravel pits.

(k) Gas and oil wells.

(l) Diversion ditches.

(m) Occupied dwellings, including industrial and commercial establishments.

(n) Landfills - dumps.

(o) Other unlined impoundments.

(p) Septic tanks and drainfields.

(q) Injection wells.

b. Topographic map (10-foot contour preferred) of sufficient detail to clearly show the following information:

(1) Maximum and minimum percent slopes.

(2) Depressions on the site that may collect water.

(3) Drainageways that may attribute to rainfall run-on to or runoff from this site.

(4) Portions of the site (if any) that are located within the 100-year floodplain.

c. Data and specifications for the liner proposed for seepage control.

d. Scaled plan view and cross-sectional view of the facilities showing inside and outside slopes of all embankments and details of all appurtenances.

e. Calculations justifying impoundment capacity.

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f. Groundwater monitoring plans for the facilities including pertinent geohydrological data to justify upgradient and downgradient well location and depth.

3. Generic plans for on-site temporary storage.

4. A legible topographic map of proposed application areas to scale as needed to depict the following features:

a. Property boundaries.

b. Surface water courses.

c. Water supply wells and springs.

d. Roadways.

e. Rock outcrops.

f. Slopes.

g. Frequently flooded areas (SCS designation).

The map shall also show the acreage to be amended with biosolids together with the net acres for biosolids application computed.

5. County map or other map of sufficient detail to show general location of the site and proposed transport vehicle haul routes to be utilized from the treatment plant.

6. A USDA soil survey map, if available, of proposed sites for land application of biosolids.

7. Representative soil samples are to be collected to address each major soil types for each field and analyzed for the soil parameters indicated in accordance with Table 5, and test results should be submitted with the management practices plan.

8. For projects utilizing frequent application of biosolids the following additional site information will be necessary.

a. Information specified (subdivisions 2 a and 4 of this subsection).

b. Representative soil borings and test pits to a depth of five feet or to bedrock if shallower, are to be coordinated for each major soil type and the following tests performed and data collected.

(1) Soil type.

(2) Soil texture for each horizon (USDA classification).

(3) Soil color for each horizon.

(4) Depth from surface to mottling and bedrock if less than two feet.

(5) Depth from surface to subsoil restrictive layer.

(6) Indicated infiltration rate (surface soil).

(7) Indicated permeability of subsoil restrictive layer.

c. Additional soil testing in accordance with Table 5.

d. Groundwater monitoring plans for the land treatment area including pertinent geohydrologic data to justify upgradient and downgradient well location and depth.

9. Description of agricultural practices including a list of proposed crops to be grown, their respective anticipated yield, planting and harvesting schedules, proposed biosolids application rates on a field-by-field basis and how biosolids application will be integrated with these schedules.

10. Pertinent calculations justifying storage and land area requirements for biosolids application including an annual biosolids balance incorporating such factors as precipitation, evapotranspiration, soil percolation rates, wastewater loading, monthly storage (input and drawdown).

## **9VAC25-32-680. Minimum site specific information required for a management practices plan.**

### A. Site management plans.

1. A comprehensive, general description of the operation shall be provided, including biosolids source(s), quantities, flow diagram illustrating treatment works biosolids flows and solids handling units, site description, methodology of biosolids handling for application periods, including storage and nonapplication period storage, and alternative management methods when storage is not provided.

2. A nutrient management plan prepared by a person who is certified as a nutrient management planner by the Department of Conservation and Recreation shall be developed for all application sites prior to biosolids application. Copies of the nutrient management plan shall be provided to the farmer operator of the site, the Department of Conservation and Recreation regional office and the chief executive officer or designee for the local government, unless they request in writing not to receive the nutrient management plan.

3. A nutrient management plan approved by the Department of Conservation and Recreation shall be required for application sites prior to board authorization under specific conditions, including but not limited to, sites operated by an owner or lessee of a confined animal feeding operation, as defined in subsection A of §62.1-44.17.1 of the Code of Virginia, or confined poultry feeding operation, as defined in subsection A of §62.1-44.17.1.1 of the Code of Virginia; sites where land application more frequently than once every three years at greater than 50% of the annual agronomic rate is proposed, and other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters.

4. All nutrient management plans shall account for all sources of nutrients to be applied to the site and include at

a minimum the following information: (i) a site map indicating the location of any waste storage facilities and the fields where biosolids or animal waste will be applied, (ii) site evaluation and assessment of soil types and potential productivities, (iii) nutrient management sampling including soil monitoring, (iv) biosolids or animal waste application rates based on the overall nutrient requirements of the proposed crop and soil monitoring results, and (v) biosolids and other nutrient source application schedules and land area requirements.

B. Biosolids transport.

- 1. Description and specifications on the bed or the tank vehicle.
2. Haul routes to be used from the biosolids generator to the storage unit and land application sites.
3. Procedures for biosolids offloading at the biosolids facilities and the land application site together with spill prevention, cleanup, (including vehicle cleaning), field reclamation and emergency spill notification and cleanup measures.
4. Voucher system used for documentation and recordkeeping.

C. Field operations.

- 1. Storage.
a. Routine storage - supernatant handling and disposal, biosolids handling, and loading of transport vehicles, equipment cleaning, freeboard maintenance, inspections for structural integrity.
b. Emergency storage - procedures for department/board approval and implementation.
c. Temporary or field storage - procedures to be followed including either designated site locations provided in the "Design Information" or the specific site criteria for such locations including the liner/cover requirements and the time limit assigned to such use.
d. Field reclamation of offloading (staging) areas.
2. Application methodology.
a. Description and specifications on spreader vehicles.
b. Procedures for calibrating equipment for various biosolids contents to ensure uniform distribution and appropriate loading rates on a day-to-day basis.
c. Procedures used to ensure that operations address the following constraints: application of biosolids to frozen ground, pasture/hay fields, crops for direct human consumption and saturated or ice/snow covered ground; maintenance buffer zones, slopes, prohibited access for beef and dairy animals, soil pH requirements, and proper

site specific biosolids loading rates on a field-by-field basis.

TABLE A-1

SLUDGE DISPOSAL SITE DEDICATION

..... a Virginia Corporation, does dedicate that tract or parcel of real estate situated, lying and being in..... County, Virginia, more particularly described by deeded and plat of survey of record in Deed Book..... pages..... and..... of the Clerk's Office of the Circuit Court of..... County, Virginia, and being the identical real estate that said corporation acquired by grant with General Warranty of Title and Modern English Covenants from..... Said dedication being to establish the aforesaid area for the disposal of sewage sludge only, and that said sludge disposal site will not be used for human habitation, grazing land for domestic animals or for agricultural purposes, and will not be accessible to the public. The full interest and control of the foresaid area dedicated shall remain with the..... and this instrument is solely for the purpose of assuring the Department of Health and the Water Control Board of the Commonwealth of Virginia as to the matters hereinabove set forth. WITNESS the following signatures and seal this.... day of....., 19....

BY:..... ATTEST:.....

State of.....

County of.....

The foregoing instrument was acknowledged before me this..... day of....., 19...., by..... of..... a..... corporation, on behalf of the corporation.....

Notary Public

My Commission Expires.....

.....

For use of Clerk of Court

This Sludge Disposal Site Dedication Document, as described above, was recorded in Deed Book..... page... on the..... day of....., 19....

SIGNED:..... of the..... Circuit Clerks Office

Article 5

Certification of Land Applicators

9VAC25-32-690. Certificate requirements for land applicators.

A. No person shall land apply biosolids pursuant to a permit issued in accordance with this regulation unless an individual holding a valid certificate of competence as specified in this regulation (certified land applicator) is onsite at all times during such land application. Certified land applicators may

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be considered to be onsite if they are at the site permitted for land application and, if it is necessary to leave the site, they are available within 30 minutes to return to the site to verify and ensure that land application of biosolids is in compliance with the issued permit. Certified land applicators shall possess the site-specific permit information necessary to conduct land application on the site in accordance with the issued permit and make available at the land application site proper identification, including their certificate number issued by the department. Monthly reports submitted in accordance with the requirements of 9VAC25-32-440 B shall bear the name and certificate number of the certified land applicators with an approved statement attesting that they were onsite at the times of the reported operations and that those operations were in compliance with the permit. The following parts of this regulation apply to any individual seeking a certificate of competence as required in §62.1-44.19:3.1 of the Code of Virginia.

B. Certificates of competence shall be issued by the department to certified land applicators. The department may issue such certification based on specified areas of training, experience and level of knowledge as demonstrated through successful completion of examinations as acceptable to the department.

## **9VAC25-32-700. Eligibility requirements.**

A. Certification may be obtained by satisfying all of the following requirements:

1. Satisfactorily completing and submitting to the department an application in the form required by the department, including a statement of any felony convictions. Such application shall be submitted to the department at least 30 days before the scheduled examination date set by the department. The application shall request information relating to the person's education, work experience, knowledge of land application of biosolids and applicable regulations, and willingness to abide by the requirements of this regulation;

2. Supplying proof of meeting one of the following:

a. A copy of a transcript or similar documentation indicating completion of a high school or higher degree or equivalent education level with work experience in an agriculturally related area including farming and three months of practical experience related to land application of biosolids acceptable to the department,

b. A combination of training acceptable to the department that may include soil science or nutrient management or farming practice related educational training and a minimum of six months of practical experience related to land application of biosolids, or

c. Evidence of prior supervisory level experience with land application of biosolids of two or more years that is acceptable to the department;

3. Obtaining a passing score on each part of the land applicators certification examination administered by the department; and

4. Submitting the required certification fee by check or money order to the department.

B. Certificates shall be valid upon notification by the department and for two years following each renewal from the established renewal date and will expire on the last day of the expiration month. Certified land applicators or applicants shall notify the department of any change in mailing address within 30 days of such change in address.

C. The department, upon review, may accept or approve land applicator certification programs of other states as satisfying partial requirements for certification.

Individuals certified as land application operators in other states under certification or licensing programs acceptable to the department will be eligible for certification in Virginia by complying with all requirements of these regulations except for subdivision A 2 of this section. These individuals may also substitute, for the requirements in this regulation, 9VAC25-32-720, the attainment of a passing score on a Virginia specific examination component that shall include at a minimum the elements listed in 9VAC25-32-720 C 1 and C 6.

## **9VAC25-32-710. Fees.**

A. Fees shall be collected for certification and recertification to defray the administrative cost for the certification program.

B. A fee may be charged to supply training materials and present education and training programs, including continuing education, which support the certification program.

C. Fees are nonrefundable and shall not be prorated.

D. The certification fee of \$100 for the initial certification period shall be due with the application for certification. If an applicant is unsuccessful in achieving a passing score on the examination, the applicant is eligible to retake the examination at a scheduled time as offered by the department. Applicants may retake the examination one time with no additional charge by resubmitting the application for certification. Eligibility for any additional examinations beyond the initial retaking will require the submittal of an application and appropriate fees.

E. The certificate of competence renewal fee is \$100.

F. All fees collected by the department shall be used exclusively for the operation of the Land Applicator Training and Certification Program.

**9VAC25-32-720. Examination.**

A. The department may offer the land applicator certification examinations on request and will schedule an examination at least once per year. The examinations shall require a demonstration of the ability to ensure that biosolids will be land applied in compliance with the requirements of this regulation. The department may limit the number of applicants taking the examination based upon available examination space.

B. Applicants for a certificate of competence shall achieve a passing score on each part of the land applicator certification examination to become eligible for certification. If applicants receive a passing score on any part of the examination they will only be retested on the remaining parts.

C. The examinations for qualified applicants for a certificate of competence in accordance with this regulation shall address the elements listed below.

1. General understanding of biosolids treatment processes and biosolids characteristics;
2. Basic principles of soils, agriculture, and silviculture;
3. Public health protection concepts;
4. Land application concepts and site management and operations;
5. Occupational safety and health protection concepts; and
6. Land application training and certification regulatory requirements, and requirements of other land application related laws, regulations, and incentive programs.

D. An individual who is unable to take an examination at the scheduled time shall notify the department at least five days prior to the date of the examination; such individual may reapply for an examination. The department may consider accepting notice of less than five days due to individual hardship situations on a case-by-case basis. Failure to notify the department may require the individual to submit a new application and payment of fees in accordance with 9VAC25-32-710.

E. The department shall establish acceptable passing scores for the examinations based on the department's determination of the level of examination performance required to show minimal acceptable competence.

F. All applicants shall be notified of results in writing within 60 days of the completion of the examinations.

G. A certificate renewal date will be established and provided to the certified land applicator.

**9VAC25-32-730. Training.**

A. The department shall provide training sessions on the various topics essential to ensure that land application of

biosolids complies with state and federal laws and regulations at least annually.

B. The department may provide a training course on concepts supporting and relating to land application of biosolids that may include biosolids use regulation; basic soil and crop science; soil fertility; environmental management; and other relevant topics.

**9VAC25-32-740. Certificate renewal.**

A. The department may not renew a certificate if a proceeding to deny certification under 9VAC25-32-760 has begun, or if the department has found that the applicant violated any requirements of this regulation. A certificate is to be renewed every two years and may be renewed on or before the expiration of a certificate by complying with all of the following requirements:

1. Submittal of a renewal application on the form the department requires;
2. Payment of the renewal fee to the department; and
3. Submittal of proof of satisfactory completion of at least four hours of continuing education course work within the past two years. The completed course work must be approved by the department as providing satisfactory training. Requests for pre-approval of continuing education courses should be received at least 60 days prior to the expected course date(s) and must include a detailed syllabus indicating time to be spent on each topic area covered. Continuing education course work must be in subject matter consistent with 9VAC25-32-720.

B. Department personnel may attend continuing education sessions to verify that the requirements are met. Proof of attendance must be verified by the course provider. The department may accept continuing education units obtained in other states if such continuing education units are specifically for the purpose of recertification in the state land application operator certification program.

**9VAC25-32-750. Certificate expiration.**

A. Certificates issued under this regulation shall expire two years from the last day of the month in which they were issued, as indicated on the certificate, if any of the requirements of 9VAC25-32-740 are not met.

B. Following the expiration of a certificate, reinstatement may be accomplished only by reapplication and compliance with all requirements of 9VAC25-32-700 A, including the examination requirements.

C. It is the responsibility of the certified land applicators to accumulate the required continuing education requirements prior to expiration of the certificate of competence they hold. The department will attempt to notify the certified land applicators of any continuing education needs and other

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requirements as necessary for certificate renewal 90 days or more prior to certificate expiration.

## **9VAC25-32-760. Compliance with regulations and disciplinary action.**

A. If the department finds that a certified land applicator or an applicant for certification violated any applicable requirements of this regulation, including the procedural violations listed in subsection B of this section, the department may deny, suspend or revoke certification, following the informal fact-finding procedures of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

### B. Certification procedural violations include:

1. Providing misleading, false, or fraudulent information in applying for a certificate;
2. Providing the department with any misleading, false, or fraudulent report;
3. Failing to ensure that land application of biosolids complies with permit requirements in accordance with 9VAC25-32-480 through 9VAC25-32-500 due to negligence of responsibilities by the certified land applicator;
4. Failing to promptly and accurately record observed permit noncompliance or, failure to promptly notify the permittee of observed permit noncompliance or, preventing access to inspect any land application site or, failure to provide required field records upon request, in accordance with this regulation; and
5. Conviction of a felony related in any way to the responsibilities of a certified land applicator.

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

### FORMS

Virginia Pollution Abatement Permit Application, General Instructions, revised 10/95.

Virginia Pollution Abatement Permit Application, Form A, All Applicants, revised 10/95.

Virginia Pollution Abatement Permit Application, Form B, Animal Waste, revised 10/95.

Virginia Pollution Abatement Permit Application, Form C, Industrial Waste, revised 10/95.

Virginia Pollution Abatement Permit Application, Form D, Municipal Waste, revised 10/95.

Application for a Biosolids Use Permit, 2007.

### DOCUMENTS INCORPORATED BY REFERENCE

Environmental Regulations and Technology-Control of Pathogens and Vector Attraction in Biosolids, EPA-625/R-92/013, 1992, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268.

### **9VAC25-790-10. Definitions.**

Unless otherwise specified, for the purpose of this chapter the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Area engineer" means the licensed professional engineer at the Department of Environmental Quality responsible for review and approval of construction plans and related materials who serves the area where a sewerage system or treatment works is located.

"Biosolids" means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains limited levels of pollutants, such that it is acceptable for use by land application, marketing or distribution in accordance with the ~~Biosolids Use Regulations (12VAC5-585) of the Code of Virginia~~ Virginia Pollution Abatement Permit Regulation (9VAC25-32) and the Virginia Pollutant Discharge Elimination System Permit Regulation (9VAC25-31).

"Biosolids use facility" means a type of treatment works that specifically treats or stores biosolids.

"Board" means the Virginia State Water Control Board.

"CTC" means a Certificate to Construct issued in accordance with the provisions of this chapter. This certificate will normally be in the form of a letter granting authorization for construction.

"CTO" means a Certificate to Operate issued in accordance with the provisions of this chapter. This certificate will normally be in the form of a letter granting authorization for operation.

"Critical areas/waters" means areas/waters in proximity to shellfish waters, a public water supply, recreation or other waters where health or water quality concerns are identified by the Virginia Department of Health or the State Water Control Board.

"Conventional design" means the designs for unit operations (treatment system component) or specific equipment that has been in satisfactory operation for a period of one year or more, for which adequate operational information has been submitted to the department to verify that the unit operation or equipment is designed in substantial compliance with this

chapter. Equipment or processes not considered to be conventional may be deemed as alternative or nonconventional.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality or an authorized representative.

"Discharge" means (when used without qualification) discharge of a pollutant.

"Effluent limitations" means any restrictions imposed by the board on quantities, discharge rates, and concentrations of pollutants that are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Exceptional quality biosolids" means biosolids that have received an established level of treatment for pathogen control and vector attraction reduction and contain known levels of pollutants, such that they may be marketed or distributed for public use in accordance with this chapter.

"Indirect discharger" means a nondomestic discharger introducing pollutants to a POTW.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

"Land application" means the distribution of treated wastewater of acceptable quality, referred to as effluent, or supernatant from biosolids use facilities or stabilized sewage sludge of acceptable quality, referred to as biosolids, upon, or insertion into, the land with a uniform application rate for the purpose of assimilation, utilization, or pollutant removal. Bulk disposal of stabilized sludge in a confined area, such as in landfills, is not land application.

"Licensee" means an individual holding a valid license issued by the Board for Waterworks and Wastewater Works Operators.

"Licensed operator" means a licensee in the class of the treatment works who is an operator at the treatment works.

"Local review" means a program for obtaining advance approval by the director of an owner's general local plans and specifications for future connections to, or extensions of, existing sewerage systems and of a plan for implementing them, in lieu of obtaining a CTC and CTO for each project within the scope of the plan.

"Manual" and "Manual of Practice" means Part III (9VAC25-790-310 et seq.) of the Sewage Collection and Treatment Regulations.

"Operate" means the act of making a decision on one's own volition (i) to place into or take out of service a unit process or unit processes or (ii) to make or cause adjustments in the

operation of a unit process or unit processes at a treatment works.

"Operating staff" means individuals employed or appointed by any owner to work at a treatment works. Included in this definition are licensees whether or not their license is appropriate for the classification and category of the treatment works.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control treatment works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of a treatment works.

"Owner" means the Commonwealth or any of its political subdivisions, including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of §62.1-44.5 of the State Water Control Law.

"Permit" in the context of this chapter means a CTC or a CTO. Permits issued under 9VAC25-31 or 9VAC25-32 will be identified respectively as VPDES permits or VPA permits.

"Primary sludge" means sewage sludge removed from primary settling tanks designed in accordance with this chapter that is readily thickened by gravity thickeners designed in accordance with this chapter.

"Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and

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industrial, municipal, and agricultural waste discharged into the water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by the board, and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will, or is likely to, create a nuisance or render such waters (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural or for other reasonable uses; provided that: (a) an alteration of the physical, chemical or biological property of state waters, or either a discharge, or a deposit, of sewage, industrial wastes, or other wastes to state waters by any owner, which by itself is not sufficient to cause pollution, but which, in combination with such alteration of, or discharge, or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the State Water Control Board are "pollution" for the terms and purposes of this chapter.

"Reliability" means a measure of the ability of a component or system to perform its designated function without failure or interruption of service.

"Responsible charge" means designation by the owner of any individual to have the duty and authority to operate a treatment works.

"Settled sewage" is effluent from a basin in which sewage is held or remains in quiescent conditions for 12 hours or more and the residual sewage sludge is not reintroduced to the effluent following the holding period. Sewage flows not in conformance with these conditions providing settled sewage shall be defined as nonsettled sewage.

"Sewage" means the water-carried and nonwater-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes, separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewage sludge" or "sludge" means any solid, semisolid, or liquid residues which contain materials removed from municipal or domestic wastewater during treatment including

primary and secondary residues. Other residuals or solid wastes consisting of materials collected and removed by sewage treatment, septage and portable toilet wastes are so included in this definition. Liquid sludge contains less than 15% dry residue by weight. Dewatered sludge contains 15% or more dry residue by weight.

"Sewerage system" or "sewage collection system" means a sewage collection system consisting of pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Shall" or "will" means a mandatory requirement.

"Should" means a recommendation.

"Sludge management" means the treatment, handling, transportation, use, distribution or disposal of sewage sludge.

"State waters" means all water, on the surface and under the ground, wholly or partially within, or bordering the state or within its jurisdiction.

"Substantial compliance" means designs that do not exactly conform to the guidelines set forth in Part III as contained in documents submitted pursuant to this chapter but whose construction will not substantially affect health considerations or performance of the sewerage system or treatment works.

"Subsurface disposal" means a sewerage system involving the controlled distribution of treated sewage effluent below the ground surface in a manner that may provide additional treatment and assimilation of the effluent within the soil so as not to create a point source discharge or result in pollution of surface waters.

"Surface waters" means all state waters that are not ground water as defined in §62.1-255 of the Code of Virginia.

"Toxic pollutant" means any pollutant listed as toxic under §307(a)(1) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing §405(d) of the Clean Water Act.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage, sewage sludge or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment and their appurtenances, septic tanks and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment. Treatment works does not mean ~~either biosolids use facilities or land application of biosolids on private land, as permitted under the Biosolids Use Regulations (12VAC5-585) Virginia Pollution Abatement Permit Regulation (9VAC25-32) and the Virginia Pollutant Discharge Elimination System Permit Regulation (9VAC25-31).~~

"Virginia Pollution Abatement (VPA) permit" means a document issued by the board, pursuant to 9VAC25-32, authorizing pollutant management activities under prescribed conditions.

"Virginia Pollutant Discharge Elimination System (VPDES) Permit" means a document issued by the board, pursuant to 9VAC25-31, authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

"Water quality standards" means the narrative statements for general requirements and numeric limits for specific requirements, that describe the water quality necessary to meet and maintain reasonable and beneficial uses.

Such standards are established by the State Water Control Board under §62.1-44.15(3a) of the Code of Virginia as the State Water Quality Standards (9VAC25-260).

Article 2

Procedures

**9VAC25-790-50. CTCs and CTOs.**

A. No owner shall cause or allow the construction, expansion or modification (change of 25% or more in capacity or performance capability or 20% for a biosolids use facility) of a sewerage system or treatment works except in compliance with a CTC from the director unless as otherwise provided for by this chapter and standards contained in this chapter. Furthermore, no owner shall cause or allow any sewerage systems or treatment works to be operated except in compliance with a CTO issued by the director which authorizes the operation of the sewerage systems ~~or~~ treatment works including biosolids use facilities unless otherwise provided for by this chapter and standards contained in this chapter. Conditions may be imposed on the issuance of any CTC or CTO, and no sewerage systems or treatment works may be constructed, modified, or operated in violation of these conditions.

B. Discharges of 1,000 gpd or less. On-site (located within owners property) residential sewage treatment works having a design capacity of 1,000 gallons per day or less may not be governed by this chapter and standards contained in this chapter if the performance reliability of such technology has been established by an approved testing program (9VAC25-790-210). These treatment works are regulated by other applicable regulations of the board (9VAC25-110) and of the Virginia Department of Health (12VAC5-610 and 12VAC5-640). Owners of such treatment works shall make application in accordance with and obtain the necessary permits from the board or the Virginia Department of Health as appropriate via the application procedures established for such treatment works.

**9VAC25-790-60. CTC and CTO waivers.**

A. Small sewerage systems and treatment works. As described in this section, the requirement to formally obtain a CTC and a CTO through the provisions of this chapter and standards contained in this chapter is waived for sewerage systems having a design capacity of 40,000 gallons per day or less and serving or capable of serving a population of 400 persons or less and consisting entirely of gravity flow sewers.

B. Other waivers. A waiver for formal CTC and CTO issuance may also be granted for:

1. Construction of gravity flow sewers of 12-inch diameter design size or less;
2. Installations consisting of a single sewage pumping station having a design pumping capacity of 25 gallons per minute or less and handling a total daily volume of 2000 gallons or less;
3. Land application sites meeting the operational restrictions specified in the ~~Virginia Department of Health Biosolids Use Regulations (12VAC5-585-130~~ Virginia Pollution Abatement Permit Regulation (9VAC25-32) and the Virginia Pollutant Discharge Elimination Permit Regulation (9VAC25-31); or
4. Sites utilized entirely for research projects in accordance with this chapter, such as pilot plant studies.

C. Larger sewerage systems and treatment works. In order to qualify for a CTC and CTO waiver for collection systems serving more than 400 persons, the permittee or owner must file with the area engineer an application (see Part IV (9VAC25-790-940 et seq.) of this chapter) or a letter of intent to construct and operate such a system as described above. The letter shall be filed at least 30 days prior to the time that granting of such a waiver would be required to initiate construction. The letter shall contain a brief description of the proposed sewerage system, or land application, applicable maintenance provisions, the area to be served, the location of the proposed sewerage system, treatment works, or land application and the point of discharge or entry to the downstream sewerage system or treatment works if applicable. If the owner of the sewerage system or treatment works is not the applicant, the applicant shall demonstrate that the downstream owner will accept the design flow for connection to the downstream sewerage system or treatment works. A written statement that the additional sewage being discharged into the downstream system will be accepted may be required. If after review of the application or letter, a determination is made by the director that it is not in the best interest of public health and welfare to waive the permit requirements of this chapter and standards contained in this chapter, the owner will be so notified and will be required to obtain the applicable CTC and CTO. The requirements of this subsection are not applicable if the owner has a local review

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program pursuant to this chapter and standards contained in this chapter.

D. The director may revoke a waiver granted under this section in his sole discretion if he determines that the public health and welfare would be better served by issuance of a CTC and a CTO.

## **9VAC25-790-120. Construction drawings (plans).**

A. Construction drawings (plans) for sewerage systems or treatment works improvements for which a technical evaluation is required shall provide the information necessary to determine that the owner's final plans, specifications, and other documents satisfy (i) requirements established by these regulations and engineering standards of practice; and (ii) the minimum requirements and limiting factors established in the owner's approved preliminary engineering proposal. The final plans should include:

B. Final engineering documents. Drawings, plans, specifications and other engineering documents that are submitted to the area engineer for a technical evaluation shall be in substantial compliance with this chapter prior to issuance of a CTC by the director. Engineering documents may be submitted by the owner to the area engineer following the preliminary engineering conference, or following a technical evaluation of the preliminary engineering proposal if required. Up to four copies shall be submitted to the area engineer for non-Virginia Revolving Loan Fund funded projects and up to five copies shall be submitted for projects financed through the Virginia Revolving Loan Fund. The original of the letter of submittal with appropriate signature(s) shall accompany the engineering documents. The letter of submittal should identify any necessary actions to be taken by the area engineer to expedite evaluation of the submitted documents.

All drawings, specifications, engineer's reports and other documents submitted for evaluation shall be prepared by or under the supervision of appropriately licensed professionals, legally qualified to practice in Virginia, in accordance with the provisions of §§54.1-400 to 54.1-411 of the Code of Virginia inclusive.

All submitted plans for sewerage systems or treatment works shall bear a suitable title showing the name of the municipality, sewer district, institution or other owner and shall show the scale in feet, a graphical scale, the north point, date and the name of the appropriate licensed professional. Also, each plan sheet shall bear the same general title identifying the overall project, and each shall be numbered. Appropriate subtitles shall be included on the individual sheets. The plans shall be clear and legible. They shall be drawn to a scale that will permit all necessary information to be plainly shown. The size of the plans should be no larger than 36 inches by 48 inches. The datum used should be indicated. Locations of all special features, when made, shall

be shown on the plans. Logs of test borings should be given either on plans or in the specifications. Detail plans shall consist of plan views, elevations, sections, and supplementary views which, together with the specifications and general layouts, provide the working information for the contract and construction of the works. The plans shall include dimensions and relative elevations of structures, the location and outline form of equipment, location and size of piping, water levels, ground elevations, and erosion control abatement facilities. Data shall be provided for proposed additions of flow to existing sewerage systems indicating that the additional sewage flow from the proposed project will have no adverse impact on the operation of downstream facilities.

C. Sewerage systems. Plans submitted for new construction or substantial modification (increasing flow capacity by more than 25%) of sewage collection piping shall include the following: the location, size, type and direction of flow of all existing and proposed sanitary sewers involved in the project.

1. Detailed plans when submitted for evaluation shall provide complete and properly scaled graphical depictions of design information. Profiles shall have a horizontal scale of not more than 100 feet to the inch and a vertical scale of not more than 10 feet to the inch. The plan view shall be drawn to a corresponding horizontal scale. Plans and profiles shall show:

- a. Location of streets and sewers with an identification system.
- b. Ground surface elevations and manhole stationing.
- c. Invert elevations of sewers at each manhole.
- d. Size and grade of sewer between adjacent manholes.
- e. Any special construction features.

2. All manholes shall be labeled in an established manner on the plan and correspondingly labeled on the profile. If a community does not allow the connection of basement drains to the sewer, this may be stated on the plans as a basis for exemption, and the plans need not show the elevations and locations of basement floors. Where there is any question of the sewer being sufficiently deep to serve any residence, the elevation and location of the basement floor shall be plotted on the profile of the sewer which is to serve the house in question. The engineer shall state that all sewers are sufficiently deep to serve adjacent basements except where otherwise noted on the plans.

3. Sewerage system plans shall identify locations of all special features such as inverted siphons, concrete encasement, elevated sewers, all known existing structures both above and below ground that might interfere with the proposed construction, particularly water mains, gas mains, storm drains, etc.

4. Special detail drawings, made to a scale to clearly show the nature of the design, shall be furnished to show the following particulars:

- a. All stream crossings and sewer outlets, with elevations of the streambed and normal and design flow water levels.
- b. Details of all sewer joints and cross sections requiring special construction such as concrete encasement.
- c. Details of all sewer appurtenances such as manholes, inspection chambers, inverted siphons, regulators, tide gates and elevated sewers.

D. Sewage pumping stations. Plans submitted for technical evaluation involving new construction or substantial modification (increasing flow capacity by more than 25%) of pumping stations shall address the following design information: (i) the location and extent of the tributary area; (ii) the location of municipal boundaries within the tributary area; and (iii) the location of the pumping station and force main and pertinent elevations.

1. For new construction the forms of land use (commercial, residential, and agricultural) and access control proposed for the near future over a 100-foot radius from the pumping station structure shall be indicated. Existing buildings and their types within 100 feet of the pumping station shall be indicated. Submission of detailed plans would not be required for upgraded pump stations that are issued, or included in, a final operating permit.

2. Detailed plans submitted for evaluation shall provide the following design information where applicable:

- a. A contour map of the property to be used.
- b. Proposed pumping station equipment layout and capacities including provisions for installation of future pumps or ejectors. Proper references to the specifications should be included.
- c. Elevations of operating levels of sewage contained in the wet well at the site and the estimated locations of raw sewage overflows in the collection system upon occasion of pump failure resulting in high water levels in the wet well.
- d. Test borings and ground water elevations, if taken.
- e. Plan and elevation views of the pump suction (from the wet well) and discharge piping showing all isolation valves and gates.

E. Treatment works. Plans submitted for technical evaluation of projects involving new construction or substantial modifications (increasing flow capacity by more than 25%) of treatment works shall identify the treatment works relative to the remainder of the system. For new construction, the plan shall include sufficient topographic

features to indicate its location relative to streams and the point of discharge of treated effluent. Also the forms of land use (commercial, residential, and agricultural, existing or proposed) and access controls for the near future over a 700-foot radius from the proposed treatment works structures must be indicated. Existing buildings and their type of use within 700 feet of the new treatment works site shall be adequately described, e.g., by means of topographic maps, aerial photos, drawings, etc.

1. For technical evaluation, the proposed treatment works design submittal shall include the following as specified:

- a. Topography and other characteristics of the site as specified:
- b. Size and location of treatment works structures.
- c. Schematic flow diagram showing the flow through various treatment works unit operations.
- d. Piping, including any arrangements for bypassing individual unit operations. Materials handled and direction of flow through channels, pipes and unit operations shall be shown, including arrangements for independent operation.
- e. Hydraulic flow profiles showing the average relative surface elevations of mainstream and sidestream flows of sewage, supernatant and sludge as influent, effluent and flow within the channels, piping, pumps and basins that comprise the treatment works.
- f. Soil characteristics including hydraulic conductivity established by soil tests and test borings and hydrologic factors, such as ground water elevations, that can affect the treatment of disposal capacity.

2. For technical evaluation, detailed plans shall include the following:

- a. Location, dimensions and elevations of all existing and proposed treatment works unit operations solids handling facilities and equipment.
- b. Elevations of high water levels affecting the treatment works design and to which the treatment works effluent is to be discharged or absorbed.
- c. Pertinent data concerning the rated capacity of all pumps, blowers, motors and other mechanical devices. All or part of such data may be included in the specifications by suitable reference on the plans.
- d. Average and maximum elevations for the hydraulic flow profile within the unit operations.
- e. Adequate description of any features not otherwise covered by specifications or engineer's report.

3. Facility closure plans shall address the following information as a minimum:

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- a. Residual wastewater and solids treatment, removal and final disposition.
- b. Removal of structures, equipment, piping and appurtenances.
- c. Site grading and erosion and sediment control.
- d. Restoration of site vegetation and access control.
- e. Proposed land use (post-closure) of site.

F. Plans submitted for technical evaluation of biosolids use facilities, including substantial modifications (new location of storage on site, or increasing design capacity by more than 20%) from that previously approved shall identify the proposed locations, management practices, biosolids sources, treatment and quality information as required. For new construction, the plan shall include sufficient topographic features to indicate its location relative to streams and other land use facilities, as required. The forms of land use (commercial, residential, and agricultural existing or proposed) buffer zones and access controls, for the near future, surrounding the proposed biosolids use facilities must be indicated. Existing buildings and their type of use within 200 feet of the new site shall be adequately described (e.g., by means of topographic maps, aerial photos, drawings, etc.).

Facility closure plans shall address the following information as a minimum:

1. Residual wastewater and sludge treatment, removal and final disposition.
2. Removal of structures, equipment, piping and appurtenances.
3. Site grading and erosion and sediment control.
4. Restoration of site vegetation and access control.
5. Proposed land use (postclosure) of site.

F.G. Approval. The area engineer will approve or disapprove the construction drawings and notify the owner in accordance with 9VAC25-790-80 C.

## **9VAC25-790-130. Specifications.**

A. Content. Complete technical specifications for the construction of sewers, sewage pumping stations, treatment works, biosolids use facilities including subsurface disposal pre-treatment and all appurtenances, shall accompany the plans submitted for technical evaluation.

The specifications accompanying construction drawings shall include, but not be limited to, all construction information not shown on the drawings which is necessary to inform the contractor in detail of the design requirement as to the quality of materials and workmanship and fabrication of the project and the type, size, strength, operating characteristics and rating of equipment, including machinery, pumps, valves, piping, and jointing of pipe, electrical

apparatus, wiring and meters; laboratory fixtures and equipment; operating tools, construction materials, special filter materials such as stone, sand, gravel or slag; miscellaneous appurtenances; chemicals when used; instructions of testing materials and equipment as necessary to meet design requirements and standards of practice; and operating tests for the completed works and component units.

B. Submittal. Specifications shall be submitted to the area engineer in the number and distribution specified in this chapter. One copy of the submitted documents shall bear on an initial page the original seal imprint and signature of the appropriately registered professional who prepared the specifications or under whose direct supervision the specifications were prepared for electronic submission of documents. For electronic submittal of documents, a transmittal letter shall bear the original seal and signature. Submission of specifications for gravity systems to the area engineer will not be required for those municipalities or privately owned sewerage systems that are either approved to participate in the local review program or have received department approval of local standards for design and construction. Local review participation requirements are described in 9VAC25-790-230.

C. Approval. The area engineer will approve or disapprove the specifications and notify the owner in accordance with 9VAC25-790-80 C.

## **9VAC25-790-150. Sludge management plans.**

A. Evaluation. The general purpose of the plan is to facilitate a determination by the department that the management plan developed by the owner in accordance with the department administered VPDES or VPA permit program (9VAC25-31 and 9VAC25-32) presents the necessary technical guidance and regulatory requirements to facilitate the proper management of sewage sludge, including use of biosolids, for both normal conditions and generally anticipated adverse conditions. The evaluation by the department may address methods of controlling and monitoring the quality of sludge by the owner and the means of use or disposal of that sludge by the owner or his agent.

Three types of biosolids storage may be integrated into a complete sludge management plan in accordance with the Virginia Pollution Abatement Permit Regulation (9VAC25-32) including (i) "emergency storage" involving immediate implementation of storage for any sludge that becomes necessary due to unforeseen circumstances, (ii) "temporary storage" involving the provision of storage of stabilized sludges at the land application site that becomes necessary due to unforeseen climatic events that preclude land application of biosolids in the day that it is transported from the generator, and (iii) "routine storage" involving the storage of biosolids as necessary for all nonapplication periods of the year. The requirements for the design of biosolids storage facilities are located in 9VAC25-32.

B. Approval. The department will approve or disapprove the manual and notify the owner in accordance with 9VAC25-790-80 C.

**9VAC25-790-180. CTC.**

A. Issuance. Upon approval of the proposed design by the area engineer, including any submitted plans and specifications, if required, the director will issue a CTC to the owner within 15 days of such approval to construct or modify his sewerage systems or treatment works in accordance with the approved design and submitted plans and specifications.

B. Revisions. Any deviations from the approved design or the submitted plans and specifications significantly (25% or more variation from original for sewerage systems or treatment works and 20% or more for biosolids use facilities) affecting hydraulic conditions (flow profile), unit operations capacity, the functioning of the sewage treatment process, or the quality of treated effluent discharged, must be approved by the area engineer before any such changes are made. Revised plans and specifications shall be submitted in time to allow 30 days for the review, evaluation and approval of such plans or specifications before any construction work that will be affected by such changes is begun, unless the owner has received approval to proceed from the department prior to either a formal submittal of revisions, or the department approval of submitted revisions.

C. Completion of construction. A statement shall be submitted by the owner assuring completion of construction and an inspection of the constructed system works will be scheduled in accordance with the provisions of this chapter.

1. Upon completion of the construction or modification of the sewerage systems or treatment works, the owner shall submit to the area engineer a statement signed by a licensed professional engineer stating that the construction work was completed in accordance with the approved plans and specifications, or revised only in accordance with the provisions of subsection B of this section. This statement is called a Statement of Completion of Construction and shall be based upon inspections of the sewerage systems or treatment works during and after construction or modifications that are adequate to ensure the truth of the statement.

2. The owner shall contact the area engineer and request that a final inspection of the completed construction be made so that either a conditional, or a final, CTC can be issued. Within 30 days after placing a new or modified sewerage systems or treatment works into operation, the effluent produced should be sampled and tested in a manner sufficient to demonstrate compliance with approved specifications and permit requirements. The area engineer shall be notified of the time and place of the tests and the results of the tests shall be sent to the area engineer for evaluation as part of the final CTC.

3. A closure plan should be submitted with or prior to the statement of completion of construction in accordance with this chapter.

**9VAC25-790-200. CTO modifications or revocation actions.**

A. Amendment or reissuance. The director may amend or reissue a CTO where there is a change in the manner of the collection, the treatment, or the source of sewage or sewage sludge at the permitted location, or for any other cause incident to the protection of the public health and welfare, provided notice is given to the owner, and, if one is required, a hearing held in accordance with the provisions of the Administrative Process Act.

B. Revocation or suspension. The director may suspend or revoke a CTO in accordance with the Administrative Process Act for the following reasons:

1. Failure to comply with the conditions of the CTO.
2. Violation of Title 62.1 of the Code of Virginia or of any of this chapter from which no variance or waiver has been granted.
3. Change in ownership.
4. Abandonment of the sewerage systems or treatment works.
5. Any of the grounds specified in §62.1-44.2 of the Code of Virginia.

**9VAC25-790-240. Compliance with Part III (9VAC25-790-310 et seq.--Manual of Practice) of this chapter.**

A. The design guidelines set forth in Part III (9VAC25-790-310 et seq.) of this chapter specify general criteria and minimum standards for the design and construction of sewerage systems and treatment works and are not intended to be used as a substitute for engineering experience and judgment used in accordance with standards of practice.

B. Additional standards. The director may impose standards and requirements which are more stringent than those contained in Part III of this chapter when required for critical areas or special conditions. Any such special standards and requirements including those associated with a State Revolving Loan program shall take precedence over the criteria in Part III of this chapter and will be items that warrant careful consideration at the preliminary engineering conference referenced in this chapter. Designs submitted for sewerage systems or treatment works must demonstrate that the system or works will adequately safeguard public health and welfare and will comply with the CTO and VPDES or VPA permit requirements, as appropriate.

C. Substantial compliance. Submissions that are in substantial compliance with Part III (9VAC25-790-310 et seq.) of this chapter or additional requirements of the

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department as noted above will be approved. Justification for a design may be required for those portions of the submitted design which differ from these criteria. The design engineer shall identify and justify noncompliance with specific design standards or "shall" criteria that the department identifies, or that the design engineer, in his judgment, believes to be substantial in nature. The department may request changes in designs that are not in substantial compliance with Part III of this chapter and that are not adequately justified by the engineer/owner.

D. Exceptions. Compliance with Part III of this chapter will not be required for sewerage systems or treatment works that have received the approval of the Virginia Department of Health and the board and on which modifications and construction have been commenced prior to February 27, 2002, or January 1, 2008, for biosolids use facilities. Construction or modification of sewerage systems or treatment works is deemed to be commenced for purposes of this chapter upon receipt of complete final engineering documents by the area engineer. The fact that significant work was accomplished on a specific project prior to adoption of this chapter and standards contained in this chapter shall be a consideration when evaluating applications.

## **9VAC25-790-540. Sludge stabilization.**

The selection and operation of the sludge treatment or stabilization process shall be based on the ultimate utilization of the final sludge product. Land based management of treated sewage sludge may require the production of biosolids as described in the Biosolids Use Regulations (12VAC5-585) Virginia Pollution Abatement Permit Regulation (9VAC25-32) or Virginia Pollutant Discharge Elimination System Permit Regulation (9VAC25-31). The design requirements for the treatment and stabilization processes described in this chapter are based on the assumption that they must accomplish the necessary processing of sewage sludge at the treatment works. Consideration will be given to reducing design requirements, on a case-by-case basis, for treatment works employing series operation of two or more stabilization processes or methods in accordance with the means of sludge management. The standard buffer distance of 200 feet shall be provided between the walls of open and exposed sludge treatment operations and the boundaries of the site area in which either controlled use or access restrictions apply.

## **9VAC25-790-550. Anaerobic digestion.**

A. The design of anaerobic digesters should provide an optimum environment for effective microbial degradation of the organic matter in sewage sludge. The digester system design shall address separation and removal of liquid or supernatant. The production of methane gas (CH<sub>4</sub>) should be optimized. Digester gas should be utilized as a fuel whenever practical.

B. Design. A minimum of two anaerobic digesters, or enclosed reactors, shall be provided, so that each digester may be used as a first stage or primary reactor for treating primary and secondary sludge flows generated at a treatment works with a design flow exceeding 0.5 mgd. Additional digesters are provided to treat the total flow of primary and secondary sludge generated at treatment works with sewage design flows exceeding one MGD.

1. Where multiple digesters are not provided, a storage facility or adequate available sludge processing system shall be provided for emergency use so that the digester may be taken out of service without unduly interrupting treatment works operation.

2. Each digester should have the means for transferring a portion of its contents to other digesters. Multiple digester facilities should have means of returning supernatant from the settling digester unit to appropriate points for treatment.

3. Provisions for side-stream treatment of supernatant shall be included when the supernatant load is not included in the treatment works design.

4. Multiple sludge inlets and draw-offs and multiple recirculation section and discharge points (minimum of three) to facilitate flexible operation and effective mixing of the digester contents to optimize treatment for pathogen control and vector attraction reduction shall be provided. One inlet shall discharge above the liquid level and be located at approximately the center of the digester to assist in scum breakup. Raw sludge inlets should be so located as to minimize short circuiting between the inlets and either the supernatant draw-off, or sludge withdrawal points.

5. The proportion of depth to diameter should provide for a minimum of six feet storage depth for supernatant liquor, or the proportion of total volume allocated for supernatant should be 10% or more.

6. The digester bottom shall slope to drain toward the withdrawal pipe. At least one access manholes shall be provided in the top of the digester in addition to the gas dome. One opening shall be large enough to permit the use of mechanical equipment to remove grit and sand. A separate side wall manhole shall be provided at the basin floor level.

a. To facilitate emptying, cleaning, and maintenance, the digester design shall provide for access and safety features.

b. In accordance with VOSH requirements and these regulations, the operation and maintenance manual should specify: nonsparking tools, rubber soled shoes, safety harness, gas detectors for inflammable and toxic gases, and at least one self contained breathing apparatus.

C. Loadings. Where the composition of the sewage has been established, digester capacity shall be computed from the volume and character of sludge to be digested. The total digestion volume shall be determined by rational calculations based upon such factors as volume of sludge added, its percent solids and character, the temperature to be maintained in the digesters, the degree or extent of mixing to be obtained, expected formation of inactive deposits, and the size of the installation with appropriate allowance for sludge and supernatant storage. These detailed calculations shall be submitted to justify the basis of design.

1. The design average detention time for sludge undergoing digestion for stabilization shall be a minimum of 15 days within the primary digester, but longer periods may be required to achieve the levels of pathogen control and vector attraction reduction necessary for the method used for sludge management.
2. The digester shall be capable of maintaining a minimum average sludge digestion temperature of 35°C (95°F) with the capability of maintaining temperature control within a 4°(+/-)C range.
3. If unheated digesters are utilized, they shall have the capacity to provide a minimum detention time of 60 days within the digestion volume in which sludge is maintained at a temperature of at least 20°C (68°F).
4. For digestion systems where mixing is accomplished only by circulating sludge through an external heat exchanger, the system shall be loaded at less than 40 pounds of volatile solids per 1,000 cubic feet of volume per day or at a volumetric rate that provides not less than a 30 day detention time in the active digestion volume. The design volatile solids loading should be established in accordance with the degree of mixing provided.

5. Where mixing is accomplished by other methods, loading rates shall be determined on the basis of information furnished by the design consultant.

D. Completely mixed systems. For digesters providing for intimate and effective mixing of the digestion volume contents, the systems shall be designed for an average feed loading rate of less than 200 pounds of volatile solids per 1,000 cubic feet of volume per day or at a volumetric loading that provides 15 days or more detention time in the active digestion volume.

1. Confined mixing systems include (i) arrangements where gas or sludge flows are directed through vertical channels; and (ii) mechanical stirring, or pumping systems. Both confined mixing and unconfined continuously discharging gas mixing systems shall be designed to ensure complete turnover of digestion volume every 30 minutes. For tanks over 60 feet in diameter, multiple mixing devices shall be used.
2. Unconfined, sequentially discharging gas mixing systems shall be designed using the number of discharge points and gas flow rates shown for the various tank diameters as listed in this section, unless sufficient operating data is submitted and approved to verify the performance reliability of a alternative designs.
3. Gas discharge lines (lances) mounted on a floating cover or top designed to accumulate gas emissions shall extend to the base of the vertical side wall while the cover is resting on its landing brackets. For floor mounted diffuser boxes or lances mounted to a fixed cover, gas discharge shall extend to the base of the vertical side wall.

DESIGN CRITERIA FOR MULTIPLE DISCHARGE MIXING SYSTEMS, SEQUENTIAL DISCHARGE									
Maximum Diameter (Ft.)									
Tank Diameter	20-30	31-40	41-50	51-60	61-70	71-80	81-90	91-100	101-110
Minimum Number of Points)									
Discharge Points	4	5	6	7	8	9	10	11	12
Minimum Gas Flow									
Gas Flow (CFM)	95	95	95	150	150	150	200	250	300

4. The minimum gas flow supplied for complete mixing shall be 15 cubic feet/min./1000 cubic feet of digestion volume. Flow measuring devices and throttling valves shall be used to provide the minimum gas flow.

5. The design power supplied for mechanical stirring or pumping type complete mixing systems shall be capable of achieving a minimum of 0.5 horsepower per 1,000 cubic feet of digestion volume.

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6. Where low speed mechanical mixing devices are specified, more than one device shall be provided unless other mixing devices are also provided.

E. Gas collection. All portions of the gas system, including the space above the liquid surface in the digester, storage facilities and piping shall be so designed that under all normal operating conditions, including sludge withdrawal, the gas will be maintained under positive pressure.

1. All enclosed areas where any gas leakage might occur shall be adequately ventilated.

2. All necessary safety facilities should be included where gas is produced in accordance with VOSH requirements.

3. Pressure and vacuum relief valves and flame traps, together with automatic safety shut-off valves, may be provided.

4. Water seal equipment shall not be installed on gas piping.

5. Gas piping shall be of adequate diameter to provide a velocity less than 12 feet per second at a flow of two times the average rate and shall slope to condensation or drip traps at low points.

6. The use of float controlled condensate traps is not permitted. Condensation traps shall be placed in accessible locations for daily servicing and draining.

7. Electrical fixtures and equipment located in enclosed places where gas may accumulate will be evaluated in accordance with the National Board of Fire Underwriters' specifications for hazardous conditions and other applicable codes and regulations.

8. The electrical equipment provided in sludge-digester pipe galleries containing gas piping should be designed and installed to eliminate potential explosive conditions. The design of electrical equipment located in any location where gas or digested sludge leakage is possible will be evaluated in accordance with applicable codes and regulations.

9. Waste gas burners shall be readily accessible and should be located at least 50 feet away from any structure, if placed at ground level. Gas burners may be located on the roof of the control building if sufficiently removed from the digester and gas storage tank and will comply with all applicable state and federal air pollution control requirements. Waste gas burners shall not be located on top of the digester or gas storage tank.

10. In remote locations it may be permissible to discharge small quantities of digester gas (less than 100 CFH) to the atmosphere through a return bend screened vent terminating at least 10 feet above the walking surface, provided the assembly incorporates a flame trap and is in

compliance with all applicable state and federal regulations.

11. A gas meter with bypass shall be provided to meter total gas production. Gas piping lines for anaerobic digesters shall be equipped with closed type indicating gauges. These gauges shall read directly in inches of water. Normally, three gauges will be provided: (i) one to measure the main line pressure; (ii) a second to measure the pressure to gas-utilization equipment; and (iii) the third to measure pressure to waste burners. Gas tight shut-off and vent cocks shall be provided. The vent piping shall be extended outside the building, and the opening shall be screened and arranged to prevent the entrance of rainwater. All piping of the manometer system shall be protected with safety equipment.

12. Any underground enclosures connecting with anaerobic digester tanks or containing sludge or gas piping or equipment shall be provided with forced ventilation in accordance with VOSH requirements and this chapter and standards contained in this chapter. Tightly fitting, self closing doors shall be provided at connecting passageways and tunnels to minimize the spread of gas.

F. Energy control. If practical, digesters should be constructed above the water table and should be suitably insulated to minimize heat loss. The use of digester gas as a heating fuel source is encouraged.

1. Sludge shall be heated by circulating the sludge through external heaters unless effective mixing is provided. Piping shall be designed to provide for the preheating of feed sludge before introduction to the digesters. Provisions shall be made in the layout of the piping and valving to facilitate cleaning of these lines. Heat exchanger sludge piping shall be sized for design heat transfer requirements.

2. Sufficient heating capacity shall be provided to maintain consistently the design temperature required for sludge stabilization. For emergency usage, an alternate source of fuel shall be available and the boiler or other heat source shall be capable of using the alternate fuel.

3. The heating system design shall provide for all controls necessary to ensure effective and safe operation. Facilities for optimizing mixing of the digester contents for effective heating shall be provided.

4. Sludge heating devices with open flames should be located above grade in areas separate from locations of gas production or storage.

G. Supernatant handling. Supernatant withdrawal piping shall not be less than six inches in diameter, and piping shall be arranged so that withdrawal can be made from three or more levels in the tank. A positive, unvalved, vented overflow shall be provided.

1. On fixed cover digesters the supernatant withdrawal level should preferably be selected by means of interchangeable extensions at the discharge end of the piping.

2. If a supernatant selector is provided, provision shall be made for at least two other draw-off levels located in the supernatant zone of the digester in addition to the unvalved emergency supernatant draw-off pipe. High pressure backwash facilities shall be provided.

3. Provisions shall be made for sampling at each supernatant draw-off level. Sampling pipes shall be at least 1-1/2 inches in diameter.

4. Management of digester supernatant must be addressed in the treatment works design. Also, sidestream treatment alternatives for digester supernatant shall be considered in the preliminary engineering design.

### **9VAC25-790-570. Composting.**

A. Conventional sludge composting facilities aerobically process digested, or otherwise treated, sewage sludge that is uniformly mixed with other organic materials and bulking agents to facilitate biological decomposition of organics. The treated sewage sludge will be exposed to temperatures at or above 55°C for three consecutive days or more. The method of mixing and aeration, and the carbon to nitrogen characteristics, of the compost mix are critical to the process design.

B. General design. Unless the facility is totally enclosed, an appropriate buffer shall be established on a case-by-case basis by considering both the locations of any residential area, hospitals, nursing homes for the elderly and serum production centers and the prevailing wind at such locations. Local jurisdictions impacted by this restriction shall be so notified.

1. All compost facilities shall be provided with adequate means to prevent and control odors as necessary.

2. All compost facilities shall be provided with all-weather roads to and from the facility, as well as between the various process operations.

3. The receiving, mixing, composting, curing, drying, screening, and storage areas shall be paved with asphaltic concrete, reinforced concrete, or other impervious, structurally stable material that provides similar site characteristics.

4. The facility shall be graded to prevent uncontrolled runoff and a suitable drainage system shall be provided to collect all process wastewater and direct it to storage and treatment facilities. Process wastewater includes water collected from paved process areas. The capacity of the drainage system, including associated storage or treatment works system shall be based on the 24-hour rainfall of a 10-year return frequency.

5. All facility process wastewater and sanitary wastewater shall be collected and treated prior to discharge.

C. Facilities. A weigh scale, volumetric method, or other means shall be provided for determining the amount of sludge or residuals delivered to the facility and the amount of compost material removed from the facility. Adequate space and equipment must be provided for mixing operations and other material handling operations.

1. Where liquid, or dewatered, sludge or residuals are processed by the compost facility, all receiving of such inputs shall occur in either:

a. An area that drains directly to a storage, treatment, or disposal facility.

b. A handling area which shall be hard-surfaced and diked to prevent entry of runoff or escape of the liquids.

c. A sump with an adequately sized pump located at the low point of the hard-surfaced area shall be provided to convey spills to a disposal or holding facility.

2. Provisions for cleaning all sludge transport or residual hauling trucks that return to public roads, shall be provided at all compost facilities. The facility shall be capable of effective operation regardless of weather conditions. Wash water shall be collected for necessary treatment.

3. At all compost facilities handling liquid or dewatered residual materials that must be mixed prior to composting, a mixing operation shall be provided. The operation shall have sufficient capacity to properly process the peak daily waste input with the largest mixer out of operation. Volumetric throughput values used to establish necessary mixing capacity may be based on the material volume resulting from the sludge to bulking agent ratio, or may be estimated from previous experience or pilot scale tests.

4. Effective mixing equipment should be provided for use at all compost facilities. The ability of all selected equipment to produce a compostable mix from sludge of an established moisture content, residual material, and the selected bulking agent shall be documented from previous experience or pilot tests.

5. Except for windrow composting wherein mobile mixers are used, an area with sufficient space to mix the bulking agent and sludge or residuals and store half of the daily peak input shall be provided. The mixing area shall be covered to prevent ambient precipitation from directly contacting the mix materials.

6. Where conveyors are used to move the compost mix to the composting area and or help provide mixing, either sufficient capacity shall be provided to permit handling of the mix with one conveyor out of operation, or a backup method of handling or storing shall be provided. Runoff shall be directed to a storage or treatment facility. Capacity

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of the drainage system shall be based on the 24-hour rainfall producing a peak rate expected once in 10 years.

D. System design. The system design shall be sufficient to provide the level of treatment required for protection of public health and welfare in relation to the anticipated management method. Consideration should be given to covering the compost mixing pad and curing area in order to allow for handling of bulking agents and treated sludge and the finished compost, during extended periods of precipitation. If a roof type cover is not provided, operation of the facility during critical weather periods shall be addressed. Sufficient equipment shall be provided for routinely measuring the temperature and oxygen at multiple points and depths within the compost piles.

1. Windrow method. The area requirements shall be based on the average daily compost mix inputs, a minimum detention time of 30 days on the compost pad, and the area required for operation of the mixing equipment. Sufficient compost mix handling equipment shall be provided to turn the windrows daily. In addition, proper drainage and space shall be provided to allow equipment movement between compost pile sections and access around the working areas.

2. Aerated-static pile method. The aerated-static pile area requirement shall be based on the average daily compost mix inputs, along with storing base and cover material, with a composting time of 21 days, unless the applicant can demonstrate through previous experience or pilot scale studies that less time is necessary to achieve the requirements.

a. The compost mix pile shall be provided with a means of uniformly distributing air flow. One foot or more thick base of friable material may be utilized under the deepest sections of compost mix. A 1-1/2 foot or more thick covering blanket of unscreened compost or a one foot thick or more blanket of screened compost may be utilized over the compost mix pile.

b. Compost mix piles should be configured to provide adequate aeration of the mix using either positive or negative pressure for air flow through the piles.

3. Confined composting methods. Due to the large variation in composting processes, equipment types, and process configuration characteristic of currently available confined systems, such as enclosed operations or in-vessel systems, it is not feasible to stipulate specific design criteria. However, a confined composting system will not be approved unless the applicant can demonstrate, through previous operating experience or pilot scale studies, that the material removed from the enclosed container or compost process, after the manufacturer's suggested residence time, has an equivalent or higher degree of stabilization than would be achieved after 21 consecutive days of aerated static pile composting.

E. Aeration. Sufficient blower capacity shall be provided to deliver the necessary air flow through the compost mix, but the delivered air flow shall not be less than a minimum aeration rate of 500 cubic feet per hour per dry ton (CFH/DT). Where centralized aeration is utilized, multiple blower units shall be provided and shall be arranged so that the design air requirement can be met with the largest single unit out of service. Where individual or separated blowers are used, sufficient numbers of extra blowers shall be provided so that the design air requirement can be met with 10% of the blowers out of service. For facilities that are not continuously manned, the blower units should be equipped with automatic reset and restart mechanisms or alarmed to a continuously manned station, so that they will be placed back into operation after periods of power outage.

1. Each pile aeration distribution header shall be provided with a throttling control valve. The aeration system shall be designed to permit both suction and forced aeration. The piping system shall be capable of delivering 150% of the design aeration rate. The aeration piping may be located in troughs cast into the compost pad.

2. The aeration system shall be designed to permit the length of the aeration cycle to be individually adjusted at each pile header pipe.

F. Compost handling. The design of the curing area shall be based on a minimum retention time of 30 days unless the applicant can demonstrate through previous experience or pilot studies that less time is required. Daily input shall be based on the average daily input of mix to the composting area.

1. A drying stage is optional, but is usually required if compost is to be recycled as a bulking agent or if screening is required. Consideration should be given to covering the drying area. If a cover is provided, it can be designed so that sunlight is transmitted to the composting materials while preventing direct contact with ambient precipitation. Efficient drying may be accomplished by drawing or blowing air through the compost mixture or by mechanical mixing of shallow layers with stationary bucket systems, mobile earth moving equipment, or rotating discs.

2. Screening shall be provided for all compost facilities where the compost disposition necessitates the use of a screened product or where the bulking agent must be recycled and reused. When dry compost is used as a bulking agent screening is not typically provided.

a. A daily screening capacity of 200% of the average daily amount of compost mix shall be provided when screening is required.

b. Based on previous composting facility performance, or on pilot tests, the ability of the specified equipment to screen compost at the projected moisture range shall be demonstrated.

c. The area used for screening should be covered unless operations are not hindered when screening is temporarily discontinued.

3. Storage areas shall be provided for six months storage of compost unless the applicant can demonstrate (through previous experience, pilot studies or letters of intent to accept compost offsite) that less storage area is required. Storage for curing or drying biosolids compost is usually provided if compost is to be recycled for public use.

For all compost facilities where a separate bulking agent is required, storage area for a six-month supply of the bulking agent shall be provided, unless the applicant can demonstrate that bulking agent supplies can be replenished more frequently.

**9VAC25-790-580. Heat treatment.**

A. The design of heat treatment systems shall be based on the anticipated sludge flow rate (gpm) with the required heat input dependent on sludge characteristics and concentration. The system should be designed for continuous 24-hour operation to minimize additional heat input to start up the system. Measures for the adequate control of odors shall be stipulated for review.

B. Design. Multiple units shall be provided unless nuisance-free storage or alternate stabilization methods are available, to avoid disruption to treatment works operation when units are not in service. If a single system is provided, standby grinders, fuel pumps, air compressor (if applicable), and dual sludge pumps shall be required.

1. A reasonable downtime for maintenance and repair based on data from comparable facilities shall be included in the design. Adequate storage for process feed and downtime shall be included. Control parameters shall be adequately monitored. Continuous recorders to monitor temperatures shall be provided.

2. Due to the large variation in incineration processes, equipment types, and configurations characteristic of currently available incineration systems, it is not feasible to stipulate specific design criteria. Therefore, these systems shall be considered on a case-by-case basis. Design of these systems should be based on pilot plant studies or data from comparable facilities.

C. Features. The process should provide heat stabilization in a reaction vessel within a range of 175°C or 350°F for 40 minutes to 205°C or 400°F for 20 minutes at pressure ranges of 250 to 400 psig, or provide for pasteurization at temperatures of 30°C or 85°F or more and gage pressures of more than one standard atmosphere (14.7 psia) for periods exceeding 25 days. The conventional heat drying system involves either direct or indirect contact between a dewatered sludge cake and hot gases in order to reduce the moisture

content of the cake to 10% or less. The sludge cake temperature is typically 800°F or more during this process.

1. Sludge grinders shall be provided to protect heat exchangers from rag fouling. An acid wash or high pressure water wash system shall be available to remove scale from heat exchangers and reactors. Materials of construction of heat exchangers shall be selected to minimize corrosion.

2. The decant tank shall be equipped with a sludge scraper mechanism and shall be covered to prevent odor release.

3. Separate, additional grit removal (in addition to grit removal at the treatment works influent) should be considered to prevent abrasion of piping.

4. Adequate treatment works or sidestream treatment shall be provided for the recycle streams from heat treatment.

5. Odor control shall be addressed for exhaust and off-gas from decant tanks in accordance with state and federal air pollution control requirements.

D. Incineration. Sludge incinerator ash may be used as either a material additive or an ingredient for the manufacture of construction materials and other products. Due to the large variation in incineration processes, equipment types, and configurations characteristic of currently available incineration systems, it is not feasible to describe a conventional design. Design of these systems should be based on pilot plant studies or data from comparable facilities.

**9VAC25-790-590. Chemical treatment.**

A. The fundamental design areas to be considered include chemical feeding, mixing, and storage capacity. Chemical treatment operation controls may include pH, contact time and mixture temperature.

B. Alkaline treatment. The three design parameters typically considered fundamental for design of an alkaline stabilization system include pH, contact time, and mixture temperature. The alkaline additive dosage required to stabilize sludge is determined by the type of sludge, its chemical composition and the solids concentration. Performance data taken from pilot plant test programs or from comparable facilities should be used in determining the proper dosage.

1. ~~The~~ For conventional treatment, the design objective shall be to furnish uniform mixing in order to maintain a pH of 12 or above for two hours or more in the alkaline additive-sludge mixture. The design criteria for accomplishing adequate treatment may include:

a. Adding a controlled dosage of alkaline agents to sludge and providing uniform mixing of the sludge and agents.

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b. Bringing the alkaline additive-sludge mixture pH to the design objective, such as a mixture pH of 12.5 or more and maintaining the mixture pH above 12.5 for 30 minutes or more.

c. Providing capacity to achieve a temperature of the alkaline-sludge mixture of more than 52°C, if desired, and maintaining a sufficient temperature over a measured contact period to ensure pasteurization.

d. Maintaining conditions so that the sludge is not altered or further distributed for two hours or more after alkaline treatment.

2. For Class I or Class II treatment to achieve pathogen reduction and control for beneficial uses of sewage sludge, including biosolids, the design objective shall be to meet the operational standards for pH during pasteurization, contact time, temperature, pH following pasteurization, and any other applicable requirements specified in the Virginia Pollution Abatement Permit Regulation (9VAC25-32) for the alkaline treatment.

~~2.~~ 3. Multiple units shall be provided unless nuisance-free storage or alternate stabilization methods are available to avoid disruption to treatment works operation when units are not in service. If a single system is provided, standby conveyance and mixers, backup heat sources, dual blowers, etc., shall be provided as necessary. A reasonable downtime for maintenance and repair based on data from comparable facilities shall be included in the design. Adequate storage for process, feed, and downtime shall be included.

~~3.~~ 4. Storage facilities and chemical handling shall be designed in accordance with this chapter. Either mechanical or aeration agitation should be provided to ensure uniform discharge from storage bins. Alkaline additive feeding equipment shall meet the requirements of this chapter. Hydrated lime should be fed as a 6% to 18% Ca(OH<sub>2</sub>) slurry by weight. Other suitable means should be developed for controlling the feed rate for dry additives.

4. 5. The additive/sludge blending or mixing vessel shall be large enough to hold the mixture for 30 minutes at maximum feed rate. In a batch process, a pH greater than 12 shall be maintained in the mixing tank during this period. In a continuous flow process, the nominal detention time (defined as tank volume divided by volumetric input flow rate) shall be used in design, and a pH greater than 12 shall be maintained in the exit line. Slurry mixtures can be mixed with either diffused air or mechanical mixers. Mixing equipment shall be designed to keep the alkaline slurry mixture in complete suspension.

~~5.~~ 6. Coarse bubble diffusers should be used for mixing with compressed air. A minimum air supply of 20 scfm per 1,000 cubic feet of tank volume should be provided for

adequate mixing. The mixing tank shall be adequately ventilated and odor control equipment shall be provided.

~~6.~~ 7. Mechanical mixers should be sized to provide 5 to 10 HP per 1,000 cubic feet of tank volume. Impellers should be designed to minimize fouling with debris in the sludge.

~~7.~~ 8. Pasteurization vessels shall be designed to provide for a minimum retention period of 30 minutes. The means for provision of external heat shall be specified.

C. Chlorine treatment. The stabilization of sludge by high doses of chlorine should be considered on a case-by-case basis. Process equipment that comes into contact with sludges that have not been neutralized after chlorine oxidation shall be constructed of acid resistant materials or coated with protective films. Caution should be exercised with recycle streams from dewatering devices or sludge drying beds which have received chlorine stabilized sludge due to the creation of potential toxic byproducts which may be detrimental to the treatment process or receiving stream.

D. Other treatment. Other processes for chemical treatment can be considered in accordance with this chapter.

## **9VAC25-790-600. Sludge thickening.**

A. Sludge thickening to decrease the liquid fraction should be considered for volume reduction and conditioning of sludges prior to treatment and management. Biological sludges returned to reactors should be thickened to provide for effective control of biomass. Prior to conventional treatment of biosolids, thickening should be provided to reduce volume and to condition the raw sludge flow.

B. General design. Thickener design shall provide adequate capacity to meet peak demands. Thickeners should be designed to prevent septicity during the thickening process.

1. A sludge handling bypass around the thickening process is required. Dual units or alternate storage is required for all treatment works of greater than 1 mgd capacity.

2. Thickeners shall be provided with a means of continuous return of supernatant for treatment. Provisions for side-stream treatment of supernatant should be considered.

3. Consideration should be given to any potential treatment advantages obtained from the blending of sludges from various treatment processes.

4. Odor control shall be addressed with consideration being given to flexibility of operations and changes of influent sludge characteristics.

C. Gravity systems. Clarifiers or gravity thickeners sufficiently sized for clarification will provide for thickening. However, the use of mechanical stirring devices will significantly improve the performance of gravity thickeners. Mechanical thickeners employ low speed stirring mechanisms for continuous mixing and flocculation within the zone of

sludge concentration. In this manner, liquid separation is enhanced.

1. Conventional overflow rates for gravity thickeners should be in the 400-800 gpd per square foot range. The engineer shall provide the basis and calculations for the nonconventional surface loading rates. The side water depth of conventional gravity thickeners shall be a minimum of 10 feet. Circular thickeners shall have a minimum bottom slope of 1-1/2 inches per radial foot.

2. A gravity sludge thickener shall be so designed as to provide for sludge storage, if sufficient storage is unavailable within other external tankage. Sludge withdrawal from gravity thickeners should be controlled and adjusted, and variable speed pumps should be provided.

3. Gravity thickeners should be provided with bottom scraping equipment to enhance sludge removal. The scraper mechanism peripheral velocity should be in the 15 to 20 feet per minute range.

a. The scraper mechanical train shall be capable of withstanding extra heavy torque loads. The normal working torque load shall not exceed 10% of the rated torque load.

b. A method to correct blockage of the scraper mechanism and restore operation from a stalled position should be provided in accordance with the Operation and Maintenance Manual.

4. Alternative designs should be based on data obtained from a pilot plant (relatively small scale test equipment) program. Chemical addition and dilution water feed systems should be evaluated for use to optimize performance.

D. Dissolved air flotation. Dissolved air flotation (DAF) basins shall be equipped with bottom scrapers to remove settled solids and surface skimmers to remove the float established through release of pressurized air into the sludge inflow. The bottom scraper should function independently of the surface skimmer mechanism. Dissolved air flotation units should be enclosed in a building. A positive air ventilation system and odor control shall be provided.

1. Conventional design parameters include:

a. Maximum hydraulic loading rates of 2.0 gallons per minute per square foot of surface area (gal/min/sq. ft.).

b. A solids loading rate in the range of 0.4 to 1.0 pounds per hour per square foot of surface area (lb/hr/sq. ft.) without chemical addition. A solids loading rate of up to 2.5 lbs./hr./sq. ft. may be used if appropriate chemical addition is provided (9VAC25-790-860).

c. An air supply to sludge solids weight ratio in the range of 0.02 to 0.04.

2. The recycle ratio should be in the 30% to 150% range. The recycle pressurization system should utilize DAF effluent or secondary effluent if use of potable water is not available. The retention tank system shall provide a minimum pressure of 40 psig.

3. A polymer feed system shall be provided. The feed system shall meet the requirements of this chapter.

4. Alternative design should be based on data obtained from a pilot plant test program if sufficient operational performance data is not available.

5. Skimmer design shall be multiple or variable speed such as to allow normal operation in the less than one fpm range, with the capability of a speed increase to 25 fpm.

E. Mechanical separation. Filters or centrifuge can be used to thicken sludges. The process shall be preceded by pretreatment to remove material that can plug the media, nozzles or cause excessive wear.

1. Provisions for the addition of appropriate coagulants to the sludge inflow to the filter or centrifuge shall be considered.

2. The design basis and calculations for nonconventional loading rates shall be submitted for evaluation.

3. Filtrate or centrate shall be returned to the head of the primary units, aeration basins, or a separate side-stream treatment system.

**9VAC25-790-660. Sludge management.**

Sludge management activities not specifically provided for through approval of design plans and specifications shall be described in a sludge management plan submitted by the owner to the area engineer and the DEQ regional office for review and approval. The use or disposal of treated sewage sludge shall be addressed through either the sludge management plan required by the VPDES permit, or a permit issued through the Biosolids Use Regulations (12VAC5-585) Virginia Pollution Abatement Permit Regulation (9VAC25-32) or Virginia Pollutant Discharge Elimination System Permit Regulation (9VAC25-31).

Article 6

Biological Treatment

**9VAC25-790-880. Land treatment.**

A. Site specific information shall be submitted with the preliminary proposal in accordance with this chapter and standards contained in this chapter.

Land treatment systems shall have adequate land for pretreatment facilities, storage reservoirs, administrative and

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laboratory buildings, and buffer zones, as well as the application sites (field area). The availability of this land should be determined prior to any detailed site evaluation. Site availability information should be obtained concerning:

1. Availability for acquisition or acceptable control.
2. Present and future land use.
3. Public acceptance.

B. Site design. Conformance to local land use zoning and planning should be resolved between the local government and the owner. Adjacent owners should be contacted by the applicant to establish whether significant opposition to the proposed location, or locations, exists. Concerns of adjacent landowners will be considered in the evaluation of site suitability. Public meetings may be scheduled either during or after the evaluation of final design documents so that the department can discuss the technical issues concerning the system design through public participation procedures. Public hearings may be held as part of the certificate/permit issuance procedures.

1. The estimated established site size should be calculated using a typical maximum annual loading depth of 36 inches for slow rate systems and a maximum depth of 72 inches per year for high rate systems to compute the field area size. In addition, the buffer zone area should be estimated using a typical distance of 200 feet from the extremities of the field areas to adjacent property lines. This total estimated site area should be available and permission obtained to gain access to the site for field investigations.

2. When investigating a potential site for application of wastewater, there are some limiting factors, including topography, soils, and vegetative growth (crop), which shall be evaluated early to determine site suitability for a land treatment system. This evaluation should be made in two phases: a preliminary phase and a field investigation phase.

3. The preliminary phase of site evaluations should include the identification of the proposed location of the land treatment system on a recent U.S.G.S. topographic map (7.5 minute quadrangle) or acceptable reproduction or facsimile thereof. A property line survey map should also be available for use in identifying the site location or locations.

4. The 100-year flood elevation should be identified and the proposed pretreatment unit processes should be roughly located in relation to elevation.

5. Preliminary soils information should include a soil site suitability map and include information to identify soil textures, grades, drainage, erosion potential, suitability for certain crops, etc. Information on soil characteristics may be available from either the National Resources

Conservation Service (NRS) Office, the local Cooperative Extension Service Agent, or the Soil and Water Conservation Nutrient Management Specialist.

6. The field area available for effluent application may be estimated using typical criteria based on topography and soil characteristics. Field areas should be delineated on topographic maps of the proposed land treatment site.

7. The land treatment system design consultant should arrange a Preliminary Engineering Conference (PEC), as described in this chapter, as a final step in the preliminary phase of the site evaluation. The requirements for soil borings and backhoe pits as needed to study soils should be established at the PEC. A site visit should be scheduled at the PEC that involves the appropriate regulatory personnel and the owner and design consultant.

8. The land treatment system design consultant may not wish to conduct detailed field investigations of site topography, hydrology and soil characteristics prior to the site visit by regulatory personnel and their advisors. However, the proposed locations of field areas and pretreatment units should be established and identified during the site visit. The location of any existing soil borings, backhoe pits, springs, wells, etc., should also be identified during the site visit. Soil borings and backhoe pits may be excavated prior to, during and following the site visit as required. The requirements for soil permeability and hydraulic conductivity testing should be developed either during or shortly after the site visit.

9. Applicants for development of all land treatment systems shall be required to submit at least the minimum required information as required for the appropriate certificate/permit to be issued.

C. Site features. The soil at a potential site should be identified in terms of its absorption capacity and crop production classification, which is a function of physical and chemical characteristics. Important physical characteristics include texture, structure and soil depth. Chemical characteristics that may be important include pH, ion exchange capacity, nutrient levels, and organic fraction. The absorption capacity of a soil may be directly related to soil texture and structure. Soil color may provide an indication of the movement of moisture through soil. Hydraulic conductivity may be estimated from in-field tests using acceptable infiltrometer devices. In addition, the absorption characteristics of a soil may be related to its hydraulic conductivity as measured by both in situ and laboratory tests using acceptable procedures (Table 9). The conductivity tests should be conducted in the most restrictive layer within the depth affected by the land application system. Soil productivity and nutrient management characteristics are discussed in the ~~Biosolids Use Regulations (12VAC5-585)~~ Virginia Pollution Abatement Permit Regulation (9VAC25-32).

1. Soil evaluation for a land treatment system should follow a systematic approach of selecting proper locations for borings or excavations based on topographic position, slopes and drainage. The physical characteristics of site soils should then be verified by an acceptable number of recorded observations that include soil depth to horizon changes, restrictive layers and parent material, color, texture and structure, for borings or excavations to a minimum depth of five feet.

2. If the soil characteristics differ substantially between borings or excavations, without a logical technical reason for the variation, then additional boring and excavation locations should be studied to identify the nature and extent of the changes in soil patterns throughout the proposed site.

3. The soil characteristics of the proposed site should be described by a qualified technical specialist knowledgeable in the principles of soil science, agronomy, and nutrient management. The long-term impact of land application of the treated effluent on site soils and vegetation or crops must be evaluated by the land treatment system design consultant. Certain minimum soil depths are required for approval of a land application site. The minimum required depth for field areas will depend on the type of land application system as well as the soil characteristics.

4. Representative soil samples shall be collected for each major soil type identified by the field investigation and analyzed for certain parameters in accordance with this chapter.

5. Detailed information on the geologic conditions of the proposed site shall be provided by a geologist or other technical specialist, or specialists, knowledgeable in geohydrologic principles.

a. Detailed information on the site hydrology and groundwater shall be provided by a geologist, hydrologist or other technical specialist, or specialists, knowledgeable in hydrologic principles and ground water hydrology.

b. The depth to the permanent ground water table below the site shall be determined. The location, depth and extent of perched water tables as well as the estimated seasonal fluctuations shall be established. The effect of the permanent and seasonal water tables on performance of the particular land treatment system shall be evaluated by the design consultant.

c. The characteristics of ground water movement under the proposed site should be established and evaluated using piezometer installations or other acceptable methods. The potential impact of the land treatment system on aquifer hydraulics and water quality shall be

predicted through the use of modeling and appropriate monitoring devices.

d. The present and planned uses of the aquifer(s) identified as affected by the land treatment system should be determined by the consultant.

D. Land treatment methods. The following methods, or combinations thereof, as regulated by the appropriate permit or certificate, are considered conventional technology in accordance with this chapter:

1. Irrigation - slow rate. Wastewater may be applied by spraying, flooding, or ridge and furrow methods. Irrigation methods are designed not to discharge to surface waters.

2. Rapid infiltration. Wastewater may be applied by spreading and spraying. The system shall be designed to meet all certificate/permit requirements and groundwater standards.

3. Overland flow. This method of wastewater renovation is best suited for soils with low permeability. Generally, a permit or certificate for a discharge to surface waters must be issued.

E. Other alternatives. Natural treatment systems such as aquatic ponds, constructed wetlands and biological/plant filters and other aquatic plant systems are somewhat related to land treatment technology. Natural treatment involves the use of plants in a constructed but relatively natural environment for the purpose of achieving treatment objectives. The major difference between nonconventional natural and conventional treatment systems is that conventional systems typically use a highly managed and controlled environment for the rapid treatment of the wastewater. In contrast, nonconventional natural systems use a comparatively unmanaged environment in which treatment occurs at a slower rate.

1. The use of natural treatment as a part of a land treatment system may take several forms including ponds called "Aquatic Processing Units" (APU). Floating plants such as water hyacinths and duckweed are often used in APU treatment.

2. Constructed wetlands are defined as areas where the wastewater surface is controlled near (subsurface flow) or above (free water surface) a soil or media surface for long enough each year to maintain saturated conditions and the growth of related vegetation such as cattails, rushes, and reeds.

3. Constructed wetlands must provide for groundwater protection and may be used to provide additional treatment to primary, secondary, or highly treated effluents prior to final discharge.

4. Natural (existing) wetlands are considered as state waters and any discharge to them shall be regulated in accordance with an issued discharge permit or certificate.

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F. Features. Biological treatment that will produce an effluent either with a maximum BOD<sub>5</sub> of 60 mg/l or less, or be of such quality that can be adequately disinfected, if necessary, shall be provided prior to natural treatment, including use of conventional unit operations prior to the land application of treated effluent and advanced treatment prior to reuse.

Disinfection may be required following or prior to land application and other natural treatment. If spray irrigation equipment is utilized, adequate aerosol management including pre-disinfection shall be provided.

Buffer zones around field areas shall be provided in accordance with the monitored maximum microbiological content of the applied effluent as follows, with no reduction in required minimum distances to water sources and channels:

Fecal Coliform Count <sup>(1)</sup> (No./100 mls)	Minimum Buffer Distance, Feet
200 or less	200 <sup>(2)</sup>
23 or less	50 <sup>(3)</sup>
2.2 or less	None, but no application during occupation of field area <sup>(3)</sup>

Notes:

<sup>(1)</sup> Exceeded by no more than 10% or less of samples tested.

<sup>(2)</sup> No public use of field areas.

<sup>(3)</sup> Transient public use may occur after a three-hour drying period following application.

1. The owner shall provide sufficient holding time to store all flow during periods either when crop nutrient uptake is limited or nonexistent, the ground is frozen, surface saturation occurs during wet weather, the ground is covered with snow, or the irrigation site or field areas cannot otherwise be operated. The total volume of holding required shall be based on the storage necessary to provide for climatic conditions and the nutrient management requirements of the field area crop. Operational storage necessary for system maintenance shall be provided. Climatic holding periods shall be based on the most adverse conditions of freezing and precipitation, as taken from accurate recorded historical data that are available for the local area (in no case less than 25 years). The storage volume shall be sufficient to prevent any unpermitted discharges to state waters.

2. A minimum holding period of 120 days shall be required when climatic data is not available. System backup storage shall be determined by the complexity of the entire treatment system. An increase or reduction of minimum storage may be considered on a case-by-case basis based on adequate documentation of agronomic crop production and nutrient utilization.

3. The depth of the volume containment for total storage requirements shall be measured above any minimum depth requirements for maintenance.

4. The owner shall provide a minimum reserve area equivalent in size to 25% of the design field area. Additional reserve area may be required as evaluated by the division, if the general conditions of the field area are deemed marginal or in proximity of critical areas or waters. The reserve area shall be capable of being used as a functional area within 30 days of notice.

5. Some allowance for a reduced reserve shall be allowed if additional storage is provided or if there is an alternate treatment mode (e.g., discharge) that can be utilized by the facility.

6. Design criteria for treatment or storage ponds shall be in accordance with this chapter and standards contained in this chapter. In addition, the following requirements shall be met:

a. A minimum operational water depth shall be maintained.

b. Provisions shall be made to allow complete drainage of the pond for maintenance.

c. Duplicate pumps shall be provided if necessary to transport pond flows, with the capacity of each pump sized to handle the maximum rate of flow plus an allowance to deplete stored volumes.

d. Disinfection may be provided either upstream from ponds, or the pond effluent may require disinfection.

e. When chlorination is utilized to disinfect pumped flows, the detention time of the holding pond chlorination facilities shall provide a minimum of 30 minutes of contact time, based on the maximum design pumping rate in accordance with this chapter and standards contained in this chapter.

G. Design loadings. Loading rates shall be based on the most critical value as determined by the liquid and nutrient application rates, or total application amounts for other constituents (such as boron, salts, pH-alkalinity, copper or sodium, etc.), present in such concentrations as could produce pollution of either the soil, cover crop, or water quality. Total weekly application (precipitation plus liquid loading rate) shall not exceed two times the design loading rate. This higher than conventional loading rate shall be used only to balance seasonal water deficits, and groundwater quality standards shall not be exceeded unless a variance to the violated standard has been approved by the State Water Control Board.

1. An overall water balance shall be investigated in accordance with one of the following equations based on design criteria:

a. Irrigation or infiltration

$$\text{design precipitation} + \text{effluent applied} = \text{evapotranspiration} + \text{hydraulic conductivity.}$$

b. Overland flow

$$\text{design precipitation} + \text{effluent applied} = \text{evapotranspiration} + \text{hydraulic conductivity} + \text{runoff.}$$

2. Design precipitation shall be the wettest year for a 10-year period (return frequency of one year in 10). Minimum time period for this analysis should be 25 years. Average monthly distribution (average percentage of the total annual precipitation that occurs in each month) shall be assumed.

3. Design evapotranspiration (monthly) shall be 75% of average monthly pan evaporation values collected at official weather stations within or contiguous to the Commonwealth of Virginia and should be representative (similar geographically and climatological) of the proposed site.

4. Design hydraulic conductivity shall be a given percentage (see Table 9) of respective laboratory and field measurements that yield the rate at which water passes through the soil under presoaked conditions.

The test methodology should be in accordance with current published procedures made available to the department.

TABLE 9.

DESIGN HYDRAULIC CONDUCTIVITY

Type of Test	Percent of minimum measured value to be used in design
i. Saturated Vertical Hydraulic Conductivity	7
ii. Basin Infiltration	12.5
iii. Cylinder Infiltrometers	3
iv. Air Entry Permeameter	3
v. (Other--to be evaluated by the department)	

5. During periods of application, the applied nitrogen shall be accounted for through (i) crop uptake and harvest; (ii) denitrification; (iii) addition to surface water and ground water, or storage in soil. In winter, site loadings for slow rate systems shall not exceed the hydraulic design for those particular months. Winter application of treated effluent may be provided only (i) to cool season grasses (ii) following three consecutive days of minimum daily temperatures in excess of 25°F and maximum in excess of 40°F.

6. The annual liquid loading depth for plant nitrogen requirements shall be determined by the following equation:

$$L = N/2.7C$$

Where:

N = Crop nitrogen uptake, lb/acre/yr.

C = Total nitrogen concentration, mg/l

C = TKN + NO<sub>2</sub>-N + NO<sub>3</sub>-N

L = Annual liquid loadings depth, ft/yr.

TKN = Total KJELDAHL nitrogen = organic N + NH<sub>4</sub><sup>3+</sup> - N

7. The monthly nitrogen loading rate design should be distributed over the growth cycle of the particular crop, as much as practicable.

8. If other nutrients, organics, or trace elements are present in concentrations critical to either crops, soil, or water quality, then a total mass balance similar to that for nitrogen shall be investigated for each critical element or compound.

9. The land application design average rate shall be determined by the climatic conditions, selected crops, and soil characteristics. However, the maximum application rates in terms of depth of effluent applied to the field area shall be as follows:

- a. One-fourth inch per hour.
- b. One inch per day.
- c. Two inches per week (one inch per week in forest field areas used for year round application).

H. Field area design. Field area is defined as the area of land where renovation of wastewater takes place (area under actual spray or distribution pattern). The field area shall be designed to satisfy the most critical loading parameter (i.e., annual liquid loading depth) according to the following equation:

$$\text{Field Area (acres)} = Q/D \cdot 365 / (365 - S)$$

Where: Q = Wastewater flow in (acre-inches/week)

D = Applied depth in inches/week

S = Minimum required storage capacity + annual resting periods during the application season when no waste can be land applied.

1. The minimum storage capacity shall be the average design volume of flow accumulated over a period of 60 days, unless other storage periods are justified by climatic data. It should be noted that the field area equation does not take into consideration the area needed for reserve

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capacity or future expansion (no less than 25% of design field area).

2. The field area shall be divided into smaller sections for application to allow for rotational use of these sections. Rotational operation shall be designed to provide the maximum resting periods for field areas. The distribution system shall be designed to meet the requirement for alternating application to the field area sections. Minimum resting periods shall be two days, one day and two weeks for irrigation, overland flow and infiltration-percolation, respectively. Maximum wetting period shall not exceed five days, one week, and one day respectively for irrigation, infiltration-percolation, and overland flow, respectively. Resting and wetting periods depend on soil types, climatic conditions, harvesting requirements, etc.

3. The field area or areas shall be adequately enclosed with suitable fencing to prevent access to livestock and the public where necessary. Signs shall be posted at sufficient intervals (100 to 300 feet) around the entire perimeter of field areas to identify the land treatment operation and specify access precautions.

4. A groundwater monitoring system shall be provided in accordance with the permit or certificate requirements. A minimum of one upgradient and two downgradient monitoring wells shall be provided. The well locations, along with typical well construction specifications, shall be submitted with the proposal. Upon installation, the driller's log shall be submitted. Additional monitoring well locations may be required if deemed necessary upon evaluation of monitoring data. The results of any required sampling and testing of groundwater shall be submitted to the department for evaluation in accordance with the operating permit.

5. Representative agriculturally related soil tests are required on crop dependent systems to ensure adequate vegetative cover. The growing and maintaining of a vegetative cover on application sites is a very integral part of the system. The plants prevent soil erosion and utilize nutrients and water. The system design should provide for a proper balance between applied amounts of water and nutrients. The designer may wish to consult with both agronomic and nutrient management specialists on these matters. The design shall address crop and nutrient management.

6. The wastewater application schedule should be worked around the plans for harvesting. A minimum of 30 days shall be required between the last day of application and utilization of all crops. Crops that will be consumed raw by man shall not be grown in land application field areas.

7. Information on the proposed crops and their intended use may be forwarded to the Virginia Department of Agriculture and Consumer Services for evaluation.

I. Low intensity design. The low intensity application or irrigation field area should be as flat as possible with maximum slopes of 5.0% or less. The design of low intensity irrigation of treated effluent shall provide for nutrient management control. When it is necessary to locate field areas on slopes of eight to 12%, special precautions shall be taken to prevent seepage or runoff of sewage effluent to nearby streams. Dikes or terraces can be provided for field areas, together with runoff collection and return pumping equipment. The maximum field area slope should be 12%. The irrigation field area shall be located a minimum distance of 50 feet from all surface waters.

1. Five feet of well-drained loamy soils are preferred. The minimum soil depth to unconsolidated rock should be three feet. The hydraulic conductivity should be between 0.2-6 inches/hour.

2. The minimum depth to the permanent water table should be five feet. The minimum depth to the seasonal water table should be three feet. Where the permanent water table is less than five feet and the seasonal water table is less than three feet, the field area application rate shall be designed to prevent surface saturation. In addition, underdrain and groundwater pumping equipment may be required.

3. The method of applying the liquid to the field shall be designed to best suit prevailing topographic, climatic, and soil conditions. Two methods of application are:

a. Sprinkler systems with low trajectory nozzles or sprinkler heads to uniformly distribute the applied effluent across a specified portion of the field area. Application is to be restricted in high winds that adversely affect the efficiency of distribution and spread aerosol mists beyond the field areas.

b. Ditch irrigation systems that utilize gravity flow of effluent through ditches or furrows, from which effluent percolates into the soil. For uniformity of distribution, the slope of the field area is to be uniform and constant.

4. The height of spray nozzles, pressure at the spray nozzles and spacing of the laterals shall be adequate to provide uniform distribution of the effluent over the field area. The design height and pressure of the spray nozzles shall avoid damage to vegetation and soil.

5. Adequate provisions shall be made to prevent freezing and corrosion of spray nozzles and distribution lines when the system or a section of the system is not in operation.

6. Appropriate vegetation shall be maintained uniformly on all field areas. Usually water tolerant grasses with high nitrogen uptakes are used. Over seeding with cool season grasses may be necessary during the fall season, prior to October 15 of each year. Silviculture sites and reuse

irrigation sites may also be used with this type of land treatment.

J. Rapid infiltration. This form of treatment requires the least amount of land. Renovation is achieved by natural, physical, chemical, and biological processes as the applied effluent moves through the soil. Effluent is allowed to infiltrate the soil at a relatively high rate, requiring a field area with coarse grained soils. This system is designed for three main purposes (i) ground water recharge; (ii) recovery of renovated water using wells or underdrains with subsequent reuse, or (iii) discharge and recharge of surface streams by interception of ground water.

1. Five feet of sand or loamy sand is preferred. Soil grain size should be greater than .05 mm in size. The hydraulic conductivity should be greater than two inches/hour.

2. The permanent ground water table shall be a minimum of 15 feet below the land surface. With this method, a recharge mound is not uncommon and shall be properly evaluated by the consultant. A minimum distance of 10 feet should be maintained between the land surface and the apex of the recharge mound (during a worse-case situation). Lesser depths may be acceptable where under drainage is provided.

3. Spreading and spraying are the two main application techniques that are suitable for infiltration-percolation.

4. Design application rates will vary according to the site area, soil, geology, and hydrology characteristics.

5. The buffer distances from extremities of field areas to private wells should be at least 400 feet.

K. Overland flow. Renovation of wastewater is accomplished by physical, chemical, and biological means as applied effluent flows through vegetation on a relatively impermeable sloped surface. Wastewater is sprayed or flooded over the upper reaches of the slope and a percentage of the treated water is collected as runoff at the bottom of the slope, with the remainder lost to evapotranspiration and percolation. Overland systems should be capable of producing effluent at or below secondary level; however, additional treatment units may be needed to achieve the permitted effluent limitations.

1. Soils should have minimal infiltration capacity, such as heavy clays, clay loams or soils underlain by impermeable lenses. The restrictive layers in the soil should be between one to two feet from the surface to maintain adequate vegetation. The hydraulic conductivity should be less than 0.2 inches/hour. Field area slopes shall be less than 8.0%. Monitoring wells shall be provided.

2. Renovated water shall be collected at the toe of the slope in cut off ditches or by similar means and channeled to a monitoring point and disinfected as required.

3. The effluent application method should achieve a sheet flow pattern that will produce maximum contact between the applied wastewater and the soil medium. This can be accomplished by lateral distribution methods, low pressure sprays and moderate to high pressure impact sprinklers discharging onto porous pads or aprons designed to distribute the applied flow while preventing erosion. Maximum application rates in terms of depth of effluent should be less than 10 inches per week.

4. Perennial field area vegetation shall be required. Hydrophilic or water tolerant grasses are usually grown with this type of system.

L. Alternative design. Information submitted for approval of other natural treatment systems and reuse alternatives shall include performance data obtained from either full-scale systems similar to the proposed design, or pilot studies conducted over a testing period exceeding one year, to a period of two years, based on test results.

Special consideration should be given to the following factors in planning and design of natural systems:

1. Many aquatic plants are sensitive to cold temperatures and may require the use of a protected environment or operation on a seasonal basis. Some plants may be considered unacceptable for use and their growth must be controlled.

2. Control of insects, particularly mosquitoes, is normally required for constructed wetlands and aquatic plant systems. The use of mosquito-eating fish and water depth adjustments are recommended.

3. Some constituents which may be present in wastewaters, particularly those having high industrial loads, are toxic to many aquatic plants. Therefore, tests should be conducted to identify possible toxics prior to selection of the aquatic plant species.

4. Natural systems utilize a higher life form of less diversity than found in more conventional biological treatment systems. This lack of biological diversity may reduce treatment performance. Constructed wetland and aquatic plant systems could be more susceptible to long term process upsets. Therefore, the effects of fluctuations in climate and wastewater characteristics is extremely important in the design of natural systems.

5. Some aquatic plant and animal species have the potential to create a nuisance condition if inadvertently released to natural waterways. Federal, state and local restrictions on the use of certain aquatic plants and animals shall be considered.

6. Harvesting and the use or disposal of aquatic plants should result in removal of organics, solids and nutrients such as nitrogen and phosphorous from the APU effluent.

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Management of residual matter shall be in accordance with this chapter and standards contained in this chapter.

VA.R. Doc. No. R08-977; Filed October 24, 2007, 11:08 a.m.

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Final Regulation

Titles of Regulations: **12VAC5-31. Virginia Emergency Medical Services Regulations (adding 12VAC5-31-2300 through 12VAC5-31-2970).**

**12VAC5-40. Regulation Governing Financial Assistance for Emergency Medical Services (repealing 12VAC5-40-10 through 12VAC5-40-190).**

Statutory Authority: §§32.1-12, 32.1-111.4, and 32.1-111.11 of the Code of Virginia.

Effective Date: January 1, 2008.

Agency Contact: Michael Berg, Compliance Manager, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7615, FAX (804) 864-7580, or email michael.berg@vdh.virginia.gov.

Summary:

*This regulatory action repeals existing 12VAC5-40, Regulations Governing Financial Assistance for Emergency Medical Services, and concurrently adds those provisions to existing regulation 12VAC5-31. The regulation (i) updates the financial assistance requirements to reflect the practices that have been followed since the beginning of the 1990s and (ii) establishes provisions to reflect the current practices followed regarding regional emergency medical services councils.*

*Changes to the proposed regulation remove (i) clarifying language regarding the designation of EMS councils; (ii) the term "plan" from the Scope of Services; (iii) the requirement to provide documentation of locality support; (iv) clarifying language for implementation and revision dates; and (v) the requirements for regional training plans, regional mass casualty incident plans, regional medical protocols, and regional hospital diversion plans. Requirements for the medical direction committee, regional medical director, and ALS coordinator endorsement are also removed.*

*Language is added allowing the Office of EMS to award funds based on performance. This language change reflects references to the Code of Virginia as well as clarifying the intent of the regulations.*

*The major change since the publication of the proposed regulations is the insertion of language that allows the issuance of civil penalties as a possible enforcement action for agencies and entities that violate these regulations. This is consistent with language recently implemented in the Code of Virginia.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

#### Part VII

#### Designated Regional EMS Councils

#### **12VAC5-31-2300. Purpose of designated regional EMS councils.**

For the purposes of these regulations regional EMS councils shall be designated by the Board of Health, adhere to policy direction established by the Office of EMS and carry out the development and implementation of an efficient and effective statewide regional EMS system.

#### **12VAC5-31-2310. Provision of regional EMS council services within Virginia and compliance with these regulations.**

An organization or person providing designated regional EMS council services within Virginia must comply with these regulations, the applicable regulations of other state agencies, the Code of Virginia and the United States Code. The Office of EMS will publish the Virginia Regional EMS Council Designation Manual, a document that describes and provides guidance on how to comply with these regulations.

#### **12VAC5-31-2320. Requirement for regional EMS council designation.**

Any organization or person establishing, operating, maintaining, advertising or representing itself or any services as a designated regional EMS council must have a valid designation issued by the Board of Health.

#### **12VAC5-31-2330. Designation of a regional EMS council.**

A. The Board of Health will designate a regional EMS council that satisfies the representation requirements in these regulations.

B. The designation of a regional EMS council will be based on:

#### 1. The "Regional EMS Council Designation Manual" application process [ : ]

a. Completed application. Submitted applications missing any information requested will be considered incomplete and will not be processed for designation.

b. Completed Regional EMS Council Self-Assessment Checklist; comply with all indicated standards [ consistent with these regulations ],

c. Current roster of the membership of the applicant organization's board of directors. The roster needs to show all members of the board of directors for the applicant, their addresses, e-mail addresses, phone numbers, and the constituency they represent.

d. Current approved bylaws. A copy of the most recently approved bylaws complete with adoption date.

e. Scope of services [ ~~plan~~ ]. [ ~~A plan~~ This ] shall include data and information that demonstrates the qualifications of the applicant to plan, initiate, expand or improve the regional EMS delivery system.

f. Budget. A proposed budget for the first year of designation must illustrate costs associated with the applicant's proposed operations and programs as a designated regional EMS council.

g. EMS involvement. Documentation demonstrating how the applicant organization interacts with EMS agencies and personnel.

h. Policies and guidelines. Up-to-date policies and guidelines covering all aspects of the applicant's regional EMS councils operations, must show [ revision date of ] all changes made and be consistent with these regulations.

i. Directory of localities, hospitals and EMS agencies. A comprehensive directory of the localities, hospitals and EMS agencies the applicant organization will be serving [ . ]

[ ~~j. Locality support. Letters of support from the chief executive officers of the cities and counties within the applicant's proposed geographic service delivery area confirming support of the application. The letters must be dated within 120 days of the date of application and specify the three year period for which the applicant seeks designation. ]~~

2. Hospital catchment areas for all hospitals within the applicant's proposed geographic service delivery area. Hospital catchment areas are the geographic area from which a hospital draws the majority of its patients.

3. The demonstrated capability to establish communitywide and regional programs.

4. An evaluation of prior performance as a designated regional EMS council.

C. The Office of EMS will evaluate the performance and effectiveness of a regional EMS council on a periodic basis.

## **12VAC5-31-2340. Application process for designation.**

A. An applicant for regional EMS council designation shall file a written application specified by the Office of EMS.

B. If the applicant is a company or corporation as defined in §12.1-1 of the Code of Virginia it must clearly disclose the identity of its owners, officers and directors.

C. An applicant must provide information on any previous record of performance in the provision of related EMS services or any other related licensure, registration, certification or endorsement within or outside Virginia.

D. Completed application packages must be received in the Office of EMS no later than October 1 to be considered for designation commencing July 1 of the following year.

E. The application and preliminary review process is to be completed prior to a site review visit.

F. The Office of EMS may use whatever means of investigation necessary to verify any or all information contained in the application.

G. If the applicant organization does not comply with the required standards for designation as a regional EMS council, the agent of the applicant organization will be notified of the deficiencies by the Office of EMS.

H. If the applicant organization complies with the required standards, the agent of the applicant organization will be notified and arrangements will be made for a site visit by a review team as designated by the Office of EMS.

I. The Office of EMS will conduct a site review of the applicant.

J. The applicant organization will receive the written report of the visiting team reviewing its findings and recommendations in accordance with the criteria.

K. If a deficiency is reported, the Office of EMS may order the designated regional EMS council to correct the deficiency by issuing a written correction order.

L. If a deficiency requires a revisit by a site review team, a fee commensurate with direct costs will be paid by the applicant.

M. The site review process will be completed prior to the Office of EMS forwarding a recommendation for designation or denial to the Board of Health.

N. The Office of EMS will then forward a recommendation for designation or denial to the Board of Health.

O. Acting upon the favorable recommendation of the site review team and the Office of EMS, the Board of Health may designate the applicant organization as a regional EMS council.

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P. The Office of EMS may schedule unannounced site visits at its discretion.

## **12VAC5-31-2350. Inspection.**

An applicant agency and all places of operation shall be subject to inspection by the Office of EMS for compliance with these regulations. The inspection may include any or all of the following:

1. All fixed places of operations, including all offices and training facilities;
2. All applicable records maintained by the applicant agency; and
3. All vehicles and required equipment used by the applicant agency.

## **12VAC5-31-2360. Designation approval.**

A. The Office of EMS will review and make recommendations to the Board of Health determining whether an applicant is qualified for designation based upon the applicant meeting the requirements of these regulations.

B. The Board of Health will make the final determination on regional EMS designation.

C. The designated regional EMS council or applicant has the right to appeal any decision or order of the [ ~~Office of EMS~~ except as may otherwise be prohibited, and provided such a decision or order was not the final decision of an appeal Board of Health regarding approval or denial of regional EMS designation in accordance with the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) ].

## **12VAC5-31-2370. Designation periods.**

The designation is for a period of three years, effective July 1, after completion of the designation process.

## **12VAC5-31-2380. Regional EMS councils requesting undesignation.**

Regional EMS councils desiring to become undesignated by the Board of Health must provide the Office of EMS a minimum of 30 days written notice of intent. Upon review the Office of EMS will forward the request to the Board of Health with its recommendation. Only the Board of Health can grant or remove regional EMS council designation.

## **12VAC5-31-2390. Powers and procedures of regulations not exclusive.**

The Board of Health reserves the right to authorize any procedure for the enforcement of these regulations that is not inconsistent with the provisions set forth herein or the provisions of §§32.1-27 and 32.1-111.1 of the Code of Virginia.

## **12VAC5-31-2400. Exceptions.**

Exceptions to any provision of these regulations are specified as part of the regulation concerned. Any deviation not specified in these regulations is not allowed except by variance or exemption.

## **12VAC5-31-2410. Variances.**

A. The [ ~~Office of EMS commissioner~~ ] is authorized to grant variances for any part or all of these regulations in accordance with the procedures set forth herein. A variance permits temporary specified exceptions to these regulations. A designated regional EMS council may file a written request for a variance with the Office of EMS on specified forms.

1. The written variance request must be submitted for review and recommendations to the governing body of all localities in the service delivery area of the applicant or the designated regional EMS council prior to submission to the Office of EMS.

2. Issuance of a variance does not obligate localities to allow the conditions of such variance if they conflict with local ordinances or regulations.

B. Both the written request and the recommendation of the governing bodies must be submitted together to the Office of EMS.

## **12VAC5-31-2420. Issuance of a variance.**

A request for a variance may be approved and issued by the [ ~~Office of EMS commissioner~~ ] provided all of the following conditions are met:

1. The information contained in the request is complete and correct;

2. The regional EMS council concerned is designated by the Board of Health;

3. The Office of EMS determines the need for such a variance is genuine, and extenuating circumstances exist;

4. The Office of EMS determines that issuance of such a variance would be in the public interest and would not present any risk to, or threaten or endanger the public health, safety or welfare;

5. The Office of EMS will consider the recommendation of the governing body provided all of the above conditions are met; and

6. The agent of the designated regional EMS council making the request will be notified in writing of the approval and issuance within 30 days of receipt of the request unless the request is awaiting approval or disapproval of a designation. In such case, notice will be given within 30 days of the issuance of the designation.

**12VAC5-31-2430. Content of variance.**

A variance shall include but not be limited to the following information:

1. The name of the designated regional EMS council to which the variance applies;
2. The expiration date of the variance;
3. The provision of the regulations that is to be varied and the type of variations authorized; and
4. Any special conditions that may apply.

**12VAC5-31-2440. Conditions of variance.**

A variance shall be issued and remain valid with the following conditions:

1. A variance will be valid for a period not to exceed one year unless and until terminated by the [ ~~Office of EMS commissioner~~ ];
2. A variance is neither transferable nor renewable under any circumstances.

**12VAC5-31-2450. Termination of variance.**

A. The [ ~~Office of EMS commissioner~~ ] may terminate a variance at any time based upon any of the following:

1. Violations of any of the conditions of the variance;
2. Falsification of any information;
3. Suspension or revocation of the designation; and
4. A determination by the Office of EMS that continuation of the variance would present a risk to or threaten or endanger the public health, safety or welfare.

B. The Office of EMS will notify the agent of the designated regional EMS council of the termination by certified mail to his last known address.

C. Termination of a variance will take effect immediately upon receipt of notification unless otherwise specified.

**12VAC5-31-2460. Denial of a variance.**

A request for a variance will be denied by the [ ~~Office of EMS commissioner~~ ] if any of the conditions of 12VAC5-31-2430 fail to be met.

**12VAC5-31-2470. Exemptions.**

A. The Board of Health is authorized to grant exemptions from any part or all of these regulations in accordance with the procedures set forth herein. An exemption permits specified or total exceptions to these regulations for an indefinite period.

B. A designated regional EMS council may file a written request for an exemption with the Office of EMS on specified forms.

1. The written exemption request must be submitted for review and recommendations to the governing body of all localities in the service delivery area of the applicant or the designated regional EMS council prior to submission to the Office of EMS.

2. The written exemption request must be submitted to the Office of EMS a minimum of 30 days before the scheduled review by the governing bodies. At the time of submission, the applicant or designated regional EMS council must provide the Office of EMS with the date, time and location of the scheduled review by the governing bodies.

**12VAC5-31-2480. Public notice of request for exemption.**

Upon receipt of a request for an exemption, the Office of EMS will cause notice of such request to be published in a newspaper of general circulation in the area wherein the service delivery area of the applicant or designated regional EMS council making the request and in other major newspapers of general circulation in major regions of the Commonwealth. The cost of such public notices will be borne by the applicant or designated regional EMS council making the request.

**12VAC5-31-2490. Public hearing for exemption request.**

If the Board of Health determines that there is substantial public interest in a request for an exemption, a public hearing may be held.

**12VAC5-31-2500. Issuance of an exemption.**

A. A request for an exemption may be approved and an exemption issued provided all of the following conditions are met:

1. The information contained in the request is complete and correct;
2. The need for such an exemption is determined to be genuine; and
3. The issuance of an exemption would not present any risk to, threaten or endanger the public health, safety or welfare of citizens.

B. The Board of Health may accept the recommendation of the governing bodies provided all of the conditions in subsection A of this section are met.

C. The agent of the designated regional EMS council making the request will be notified in writing of the approval or denial of a request.

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## **12VAC5-31-2510. Content of exemption.**

An exemption includes but is not limited to the following information:

1. The name of the applicant or designated regional EMS council to whom the exemption applies;
2. The provisions of the regulations that will be exempted; and
3. Any special conditions that may apply.

## **12VAC5-31-2520. Conditions of exemption.**

A. An exemption remains valid for an indefinite period of time unless and until terminated by the Board of Health [ ~~or~~ the Office of EMS, ~~or~~ ] unless an expiration date is specified.

B. An exemption is neither transferable nor renewable.

## **12VAC5-31-2530. Termination of exemption.**

A. The [ Office of EMS Board of Health ] may terminate an exemption at any time based upon any of the following:

1. Violation of any of the conditions of the exemption;
2. Suspension or revocation of designation; and
3. A determination by the Office of EMS that continuation of the exemption would present risk to, or threaten or endanger the public health, safety or welfare.

B. The Office of EMS will notify the agent of the designated regional EMS council to whom the exemption was issued of the termination by certified mail to his last known address.

C. Termination of an exemption takes effect immediately upon receipt of notification unless otherwise specified.

## **12VAC5-31-2540. Denial of an exemption.**

A request for an exemption will be denied by the [ Office of EMS Board of Health ] if any of the conditions of these regulations fail to be met.

## **12VAC5-31-2550. Right to enforcement.**

A. The Office of EMS may use the enforcement procedures provided in this article when dealing with any deficiency or violation of these regulations or any action or procedure that varies from the intent of these regulations.

B. The Office of EMS may determine that a deficiency or violation of these regulations or any action or procedure that varies from the intent of these regulations occurred.

C. The enforcement procedures provided in this article are not mutually exclusive. The Office of EMS may invoke as many procedures as the situation may require.

D. The commissioner empowers the Office of EMS to enforce the provisions of these regulations.

## **12VAC5-31-2560. Enforcement actions.**

An enforcement action must be delivered to the agent of the affected designated regional EMS council and must specify information concerning the violations, the actions required to correct the violations and the specific date by which correction must be made as follows:

1. Warning: a verbal notification of an action or situation potentially in violation of these regulations.

2. Citation: a written notification for violations of these regulations.

3. Suspension: a written notification of the deactivation and removal of authorization issued under a designation.

[ 4. Civil penalty: The commissioner (or designee) may impose a civil penalty to an agency or entity that fails or refuses compliance with these regulations. Civil penalties may be assessed up to \$1,000 per offense. Violations shall be a single, different occurrence for each calendar day the violation occurs and remains uncorrected.

a. Subsequent violations of the same type may be subject to a civil penalty of \$500 per calendar day, per violation.

b. Civil penalties will not exceed a combined total of \$10,000. ]

[ 4. 5. ] Action of the commissioner: the commissioner may command a designated regional EMS council operating in violation of these regulations or state law pursuant to the commissioner's authority under §32.1-27 of the Code of Virginia and the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) to halt such operation or to comply with applicable law or regulation. A separate and distinct offense will be deemed to have been committed on each day during which any prohibited act continues after written notice to the offender.

[ ~~5. 6. ] Criminal enforcement: the commissioner may elect to enforce any part of these regulations or any provision of Title 32.1 of the Code of Virginia by seeking to have criminal sanctions imposed [ as authorized by §32.1-27 of the Code of Virginia ]. [ The violation of any of the provisions of these regulations constitutes a misdemeanor. ] A separate and distinct offense will be deemed to have been committed on each day during which any prohibited act continues after written notice by the commissioner to the offender.~~

## **12VAC5-31-2570. Correction order.**

A. The Office of EMS may order the designated regional EMS council to correct a deficiency, cease any violations or comply with these regulations by issuing a written correction order as follows:

1. Correction orders may be issued in conjunction with any other enforcement action in response to individual violations or patterns of violations.

2. The Office of EMS will determine that a deficiency or violation exists before issuance of any correction order.

B. The Office of EMS will send a correction order to the agent of the designated regional EMS council by certified mail to his last known address. Notification will include, but not be limited to, a description of the deficiency or violation to be corrected, and the period within which the deficiency or situation must be corrected, which shall not be less than 30 days from receipt of such order, unless an emergency has been declared by the Office of EMS.

C. A correction order takes effect upon receipt and remains in effect until the deficiency is corrected or until the designation is suspended, revoked, or allowed to expire or until the order is overturned or reversed.

D. Should the designated regional EMS council be unable to comply with the correction order by the prescribed date, it may submit a request for modification of the correction order with the Office of EMS. The Office of EMS will approve or disapprove the request for modification of the correction order within 10 days of receipt.

E. The designated regional EMS council shall correct the deficiency or situation within the period stated in the order.

1. The Office of EMS will determine whether the correction is made by the prescribed date.

2. Should the designated regional EMS council fail to make the correction within the time period cited in the order, the Office of EMS may invoke any of the other enforcement procedures set forth in this part.

**12VAC5-31-2580. Suspension of a designation.**

A. The [ ~~Office of EMS commissioner~~ ] may suspend a designation without a hearing [ ~~pending an investigation or revocation procedure~~ if the agency, organization or any of its personnel are found to be operating in a manner that presents a risk to, threatens, or endangers the public health, safety or welfare ].

[ ~~1. Reasonable cause for suspension must exist before such action is taken by the Office of EMS. The decision must be based upon a review of evidence available to the Office of EMS.~~

~~a. 1. ] The [ ~~Office of EMS commissioner~~ ] may suspend the designation for failure to adhere to the standards set forth in these regulations.~~

[ ~~b. The Office of EMS may suspend the designation if the agency, organization or any of its personnel are found to be operating in a manner that presents a risk to, or threatens, or endangers the public health, safety or welfare. ]~~

[ ~~e. 2. ] The [ ~~Office of EMS commissioner~~ ] may suspend the designation for violation of federal or state laws resulting in a civil monetary penalty.~~

[ ~~e. 3. ] The [ ~~Office of EMS commissioner~~ ] may suspend the designation for conviction of criminal acts.~~

B. The Office of EMS will notify the agent of the designated regional EMS council of the suspension in person or by certified mail to his last known address.

C. A suspension takes effect immediately upon receipt of notification unless otherwise specified. A suspension remains in effect until the [ ~~Office of EMS commissioner~~ ] further acts upon the designation or until the order is overturned on appeal as specified in the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

D. The designated regional EMS council shall abide by any notice of suspension.

E. The [ ~~Office of EMS commissioner~~ ] may invoke any procedure set forth in this part to enforce the suspension.

**12VAC5-31-2590. Revocation of a designation.**

A. The Board of Health may revoke the designation of a regional EMS council after a hearing or waiver thereof. Reasonable cause for revocation must exist before such action by the Board of Health. The Board of Health may revoke designation for the following:

[ ~~a. 1. ] Failure to adhere to the standards set forth in these regulations;~~

[ ~~b. 2. ] Violation of a correction order or for engaging in or aiding, abetting, causing, or permitting any act prohibited by these regulations;~~

[ ~~e. 3. ] Violation of federal or state laws resulting in a civil monetary penalty; and~~

[ ~~e. 4. ] Conviction of criminal acts.~~

B. The Office of EMS will notify the agent of the designated regional EMS council of the intent to revoke by certified mail to his last known address.

C. The designated regional EMS council will have the right to a hearing.

1. If the designated regional EMS council desires to exercise its right to a hearing, it must notify the Office of EMS in writing of his intent within 10 days of receipt of notification. In such cases, a hearing must be conducted and a decision rendered in accordance with the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

2. Should the designated regional EMS council fail to file such notice, he will be deemed to have waived the right to

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a hearing. In such case, the Board of Health may revoke the designation.

D. A revocation takes effect immediately upon receipt of notification unless otherwise specified. A revocation order is permanent unless and until overturned on appeal.

E. The designated regional EMS council shall abide by any notice of revocation.

F. The Office of EMS may invoke any procedures set forth in this part to enforce the revocation.

## **12VAC5-31-2600. Judicial review.**

A. The procedures of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) control all judicial reviews.

B. The designated regional EMS council or applicant has the right to appeal any decision or order of the Office of EMS except as may otherwise be prohibited, and provided such a decision or order was not the final decision of an appeal.

C. The designated regional EMS council or applicant shall abide by any decision or order of the Office of EMS, or he must cease and desist pending any appeal.

D. If the designated regional EMS council or applicant who sought the appeal is aggrieved by the final decision, that person may seek judicial review as provided in the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

## **12VAC5-31-2610. Submission of complaints.**

A. The Office of EMS will investigate complaints related to designation, operation and the delivery of services by regional EMS councils.

B. Any person may submit a complaint. A complaint is submitted in writing to the Office of EMS, signed by the complainant and includes the following information:

1. The name and address of the complainant;
2. The name of the designated regional EMS council or person involved; and
3. A detailed description of the complaint, including the date, location and conditions and the practice or act that exists or has occurred.

## **12VAC5-31-2620. Investigation process.**

A. The Office of EMS may investigate complaints received about conditions, practices, or acts that may violate any provision of either Article 2.1 (§32.1-111.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia or provision of these regulations.

B. If the Office of EMS determines that the conditions, practices, or acts cited by the complainant are not in violation of applicable sections of the Code of Virginia or these

regulations; then the Office of EMS will investigate no further.

C. If the Office of EMS determines that the conditions, practices, or acts cited by the complainant may be in violation of applicable sections of the Code of Virginia or these regulations, the Office of EMS will investigate the complaint fully in order to determine if a violation took place.

D. The Office of EMS may investigate or continue to investigate and may take appropriate action on a complaint even if the original complainant withdraws his complaint or otherwise indicates a desire not to cause it to be investigated to completion.

E. The Office of EMS may initiate a formal investigation or action based on an anonymous or unwritten complaint.

## **12VAC5-31-2630. Action by the Office of EMS.**

A. If the Office of EMS determines that a violation has occurred, it may apply all provisions of these regulations that it deems necessary and appropriate.

B. At the completion of an investigation and following any appeals, the Office of EMS will notify the complainant.

## **12VAC5-31-2640. [ ~~Designated regional EMS council name. (Reserved.)~~ ]**

[ ~~An organization may not apply to conduct business under a name that is the same as, or misleadingly similar to the name of an organization designated by the Board of Health as a designated regional EMS council.~~ ]

## **12VAC5-31-2650. Composition of designated regional EMS councils.**

A designated regional EMS council shall include, if available, representatives of the participating local governments, fire protection agencies, law-enforcement agencies, emergency medical services agencies, hospitals, licensed practicing physicians, emergency care nurses, mental health professionals, emergency medical technicians and other appropriate allied health professionals.

## **12VAC5-31-2660. Governing body of a designated regional EMS council.**

A. A regional EMS council shall be organizationally independent of any other entity.

B. A regional EMS council shall be governed by a board.

C. Articles of incorporation and bylaws shall be in force that specify:

1. Designated regional EMS council representation;
2. Method of designated regional EMS council appointments and/or elections;
3. Governing board representation;

4. Method of governing board appointments and/or elections;

5. Tenure of representatives;

6. Officers, their roles, responsibilities and terms of office;

7. Quorum requirements;

8. Meeting attendance requirements and enforcement policies;

9. Indemnification of officers and directors; and

10. Dissolution of assets.

D. There shall be a minimum of five members with full voting privileges comprising a governing board.

**12VAC5-31-2670. Regional EMS plan.**

A designated regional EMS council, in cooperation with the Governor's EMS Advisory Board, shall develop, maintain, and distribute a comprehensive regional EMS plan for coordinating and improving the delivery of EMS in the regional service area, in accordance with §§32.1-111.3 and 32.1-111.11 of the Code of Virginia.

1. The plan shall be submitted for approval by the Office of EMS within one year of designation.

2. The approved plan shall be distributed to the Office of EMS, all localities, EMS agencies, hospitals and EMS physicians within its service delivery area.

3. The plan shall be reviewed and revised, if necessary, every three years and redistributed to the Office of EMS, all localities, EMS agencies, hospitals and EMS physicians within its service delivery area.

**12VAC5-31-2680. Regional trauma triage plan.**

A designated regional EMS council, in corporation with the Governor's EMS Advisory Board, shall develop, maintain, and distribute a regional trauma triage plan in accordance with §§32.1-111.3 and 32.1-111.11 of the Code of Virginia.

1. The plan shall be submitted for approval by the Office of EMS within one year of designation.

2. The approved plan shall be distributed to the Office of EMS, all localities, EMS agencies, hospitals and EMS physicians within its service delivery area.

3. The plan shall be reviewed and revised, if necessary, every three years and submitted for approval by the Office of EMS.

4. The approved revisions shall be distributed to the Office of EMS, all localities, EMS agencies, hospitals and EMS physicians within its service delivery area.

**12VAC5-31-2690. [ Regional training plan. (Reserved.)**

A designated regional EMS council shall develop, maintain, and distribute a regional training plan.

1. The plan shall be submitted for approval by the Office of EMS within one year of designation.

2. The approved plan shall be distributed to the Office of EMS, all localities, EMS agencies, accredited EMS training institutions, hospitals and EMS physicians within its service delivery area.

3. The plan shall be reviewed and revised annually, as required by the Office of EMS.

4. The approved revisions shall be distributed to the Office of EMS, all localities, EMS agencies, accredited EMS training institutions, hospitals and EMS physicians within its service delivery area.

**12VAC5-31-2700. Regional mass casualty incident plan.**

A designated regional EMS council shall develop, maintain, and distribute a regional mass casualty incident plan.

1. The plan shall be submitted for approval by the Office of EMS within one year of designation.

2. The approved plan shall be distributed to the Office of EMS, all localities, EMS agencies, hospitals and EMS physicians within its service delivery area.

3. The plan shall be reviewed and revised, if necessary, every three years and submitted for approval by the Office of EMS.

4. The approved revisions shall be distributed to the Office of EMS, all localities, EMS agencies, hospitals and EMS physicians within its service delivery area.

**12VAC5-31-2710. Regional medical protocols.**

A designated regional EMS council shall develop, maintain, and distribute regional medical protocols that include medication kit restocking procedures.

1. The protocols shall be distributed to the Office of EMS, all localities, EMS agencies, hospitals and EMS physicians within its service delivery area within one year of designation.

2. The protocols shall be reviewed and revised, if necessary, every three years and redistributed to the Office of EMS, all localities, EMS agencies, hospitals and EMS physicians within its service delivery area.

**12VAC5-31-2720. Regional hospital diversion plan.**

A designated regional EMS council shall develop, maintain, and distribute a regional hospital diversion plan.

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~~1. The plan shall be distributed to the Office of EMS, all localities, EMS agencies, hospitals and EMS physicians within its service delivery area within one year of designation.~~

~~2. The plan shall be reviewed and revised, if necessary, every three years and redistributed to the Office of EMS, all localities, EMS agencies, hospitals and EMS physicians within its service delivery area.~~

## **12VAC5-31-2730. Regional medical direction committee.**

~~A designated regional EMS council shall establish a regional medical direction committee consisting of EMS physicians within its service delivery area.~~

~~1. The regional medical direction committee shall be established within one year of designation.~~

~~2. A regional medical direction committee shall:~~

~~a. Develop and implement a process for endorsement of EMS physicians;~~

~~b. Develop regional medical protocols and make them available for implementation;~~

~~c. Develop and implement a process for the provision of concurrent medical direction;~~

~~d. Develop recommendations for initial qualifications of prehospital personnel involved in patient care, and~~

~~e. Develop and implement a quality performance improvement program for continuous system and patient care outcome and improvement.~~

## **12VAC5-31-2740. Regional medical director.**

~~A designated regional EMS council shall designate, based on Office of EMS guidelines, a regional medical director for its service delivery area within one year of designation.~~

## **12VAC5-31-2750. ALS coordinator endorsement.**

~~A. A designated regional EMS council shall develop and implement an ALS Coordinator applicant endorsement process.~~

~~B. The regional ALS endorsement process shall have written guidelines and procedures, approved by the Office of EMS, that meet the requirements stated in 12VAC5-31-1700 A.~~

## **12VAC5-31-2760 12VAC5-31-2700 ]. Financial assistance for emergency medical services.**

~~A. A designated regional EMS council shall participate in the Virginia financial assistance for emergency medical services program and assist eligible EMS agencies and organizations needing funding within the service area.~~

~~B. The designated regional EMS council participation in the Virginia financial assistance for emergency medical services program process shall have written guidelines and~~

~~procedures, approved by the Office of EMS, that meet the requirements stated in 12VAC5-31-2810 through 12VAC5-31-2900.~~

## **[ 12VAC5-31-2770 12VAC5-31-2710 ]. Base funding of designated regional EMS councils.**

~~A. Required services provided by a designated regional EMS council may be funded by the state.~~

~~B. A designated regional EMS council may receive annual base funding by the state to assist with infrastructure development and maintenance in providing required regional services.~~

~~C. A designated regional EMS council shall submit documentation, as required, demonstrating a 25% match for base funding to the Office of EMS. Moneys received directly or indirectly from the Commonwealth shall not be used as matching funds.~~

## **[ 12VAC5-31-2780 12VAC5-31-2720 ]. Matching funds.**

~~For the purposes of these regulations, approved matching funds are monetary [ and/or in-kind services as approved by the Office of EMS ] and only apply to base funding.~~

## **[ 12VAC5-31-2790 12VAC5-31-2730 ]. Performance [ - based contract for service standards ].**

~~A. The Office of EMS may enter into performance-based contracts [ that establish standards ] for the delivery of specific identified services and projects with designated regional EMS councils. [ These services and projects shall include, but not be limited to, performance standards for:~~

~~1. Regional medical direction;~~

~~2. Regional EMS plan;~~

~~3. Trauma triage plan;~~

~~4. EMS performance improvement program;~~

~~5. Regional trauma performance improvement program;~~

~~6. Technical assistance and review for Rescue Squad Assistance Fund grant applications;~~

~~7. Regional infrastructure; and~~

~~8. Criteria for matching funds. ]~~

~~B. The contracts will be based upon the specific needs of the regional service delivery area and the requirements of the Office of EMS [ as described in §32.1-111.11 of the Code of Virginia ].~~

## **[ 12VAC5-31-2800 12VAC5-31-2740 ]. Accountability for public funds.**

~~A. A designated regional EMS council shall maintain a current operating statement, reflecting revenue and expenditures, available for review.~~

B. A designated regional EMS council shall have a current income and expenditure statement available at all governing board meetings.

C. A designated regional EMS council shall have an independent annual audit of financial records with management letters.

D. A designated regional EMS council [ shall may ] have an independent audit of financial records conducted by a Certified Professional Accountant (CPA) upon change of an executive director.

E. A designated regional EMS council shall retain all books, records, and other documents relative to public funds for [ five six ] years after the close of the fiscal year the funds were received. The Office of EMS, its authorized agents, and/or state auditors shall have full access to and the right to examine any materials related to public funds during said period.

F. A designated regional EMS council shall follow generally accepted accounting principles for financial management.

G. A designated regional EMS council's governing board shall approve its annual fiscal year (July 1 [ - through ] June 30) budget by July 15 of each year.

H. A designated regional EMS council shall comply with all appropriate federal and state tax-related reporting.

I. A designated regional EMS council shall follow generally accepted fund raising practices in the charitable field.

J. A designated regional EMS council shall have written policies that indicate by position, signatories of executed financial and contractual instruments.

[ 12VAC5-31-2750. (Reserved.)

12VAC5-31-2760. (Reserved.)

12VAC5-31-2770. (Reserved.)

12VAC5-31-2780. (Reserved.)

12VAC5-31-2790. (Reserved.)

12VAC5-31-2800. (Reserved.) ]

## Part VIII

### Financial Assistance For Emergency Medical Services

#### **12VAC5-31-2810. The Financial Assistance and Review Committee (FARC).**

A. Financial Assistance and Review Committee appointments.

1. Appointments shall be made for terms of three years or the unexpired portions thereof in a manner to preserve, insofar as possible, the representation of the emergency medical services councils. No member may serve more

than two successive terms. The chairman shall be elected from the membership of the FARC for a term of one year and shall be eligible for reelection.

2. The EMS Advisory Board may revoke appointment for failure to adhere to the standards set forth in these regulations, and the State and Local Government Conflict of Interests Act (§2.2-3100 et seq. of the Code of Virginia).

3. Members serving on the FARC [ † ] on [ ~~the effective date of these regulations~~ ] January 1, 2008, ] shall complete their current terms of office.

4. Midterm vacancies shall be filled by nominations submitted from affected designated regional EMS council.

#### B. Geographical representation.

1. Designated regional EMS councils shall be eligible to submit nominations to the EMS Advisory Board for representation on the FARC.

2. The eligible designated regional EMS council shall nominate one to three candidates to fill a vacancy on the FARC. The EMS Advisory Board shall make appointments from the nominations submitted by the designated regional EMS council. Consideration for filling vacancies shall include length of nonrepresentation on FARC in an effort to provide reasonable geographic distribution.

3. A designated regional EMS council whose representative has completed two successive terms on FARC shall not be eligible to submit a nomination for one full term (three years).

#### C. Meetings and attendance.

1. The FARC shall meet at least four times annually at the call of the chairman or the commissioner.

2. Attendance at FARC Grant Review meetings is mandatory for all members.

3. A quorum for a meeting of the FARC shall consist of not fewer than four members.

#### **12VAC5-31-2820. RSAF General Grant Program administration.**

A. The FARC will administer the RSAF (Rescue Squad Assistance Fund) General Grant Program and the funding of RSAF General Grant awards using the Office of EMS approved pricing, applicant eligibility, award criteria, and priorities as approved by the EMS Advisory Board.

B. The Office of EMS shall approve and maintain a list that represents an average price of EMS vehicles, EMS equipment, communications equipment, and EMS education programs frequently requested under the RSAF General Grant Program. This list will be based on current market pricing and

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is not all-inclusive. RSAF General Grant awards for items maintained on this list shall not exceed the approved amount.

C. Funding priorities for RSAF General Grants shall be identified in the Virginia Statewide EMS Plan as stipulated in §32.1-111.3 of the Code of Virginia or special initiatives as approved by the EMS Advisory Board.

## **12VAC5-31-2830. Award of RSAF General Grants.**

A. The requirements of this section shall apply to the disbursement of funds.

B. A nonprofit licensed EMS agency or other Virginia emergency medical service organization operating on a nonprofit basis exclusively for the benefit of the general public pursuant to §32.1-111.12 of the Code of Virginia is eligible for an RSAF General Grant.

An applicant must be in compliance with these regulations.

C. Programs, services, and equipment funded by the RSAF must comply with the plans, policies, procedures, and guidelines adopted by the State EMS Advisory Board. Awards are based upon one or more of the following criteria:

1. Establishment of a new EMS agency, program, or service where needed to improve emergency medical services offered in an area;
2. Expansion or improvement of an existing EMS agency, program, or service;
3. Replacement of equipment or procurement of new equipment. EMS vehicles purchased with funding from the RSAF shall meet the current state and/or federal standards for the type of vehicle purchased; or
4. Establishment, expansion or improvement of EMS training programs.

## **12VAC5-31-2840. Grant award cycle.**

A. The grant period shall be for a period of 12 months from the date of award and there shall be two review cycles per year.

B. Deadline for submission of applications shall be March 15 and September 15 of each year. Applications must be received in the Office of EMS by 5 p.m. of the date of the deadline. In the event the deadline falls on a Saturday, Sunday, state or federal holiday, the application must be received by 5 p.m. in the Office of EMS the next business day.

C. Dates of award shall be July 1 and January 1 of each year.

D. Other dates in the award process shall be established by the Office of EMS.

## **12VAC5-31-2850. Emergency awards.**

A. The commissioner empowers the Office of EMS the ability to implement Emergency Grant Awards. The Office of EMS will advise the EMS Advisory Board and FARC of emergency grants awarded and the purpose(s) of disbursement of these funds.

B. Applications shall be made to the Office of EMS on an approved application form at any time.

C. The Emergency Grant Award will be made or rejected by the Office of EMS within 10 business days after receiving an application on an approved form.

D. Award of funds shall be based upon the demonstrated needs arising from a natural or man-made disaster as defined in §44-146.16 of the Code of Virginia.

E. Award of funds shall be based upon incidents or circumstances involving the loss or potential loss of critical equipment or services.

## **12VAC5-31-2860. EMS System Initiative Awards.**

EMS System Initiative Awards are based on priorities and needs identified by the Advisory Board in concert with the office to meet EMS system objectives as stipulated in §32.1-111.3 of the Code of Virginia.

1. The Office of EMS or FARC, in consultation with EMS Advisory Board, may implement EMS System Initiative Awards at any time. Examples of such awards would include medically advanced equipment with broad application (automated external defibrillation) and information technology to enhance communications and data (computers).

2. Applications must be made to the Office of EMS on an approved application form.

3. The EMS System Initiative Award will be made or rejected by the Office of EMS within 30 business days after receiving an application on an approved form.

4. EMS System Initiative Awards shall be based upon the demonstrated needs from the following criteria:

- a. Establishment of a new EMS agency, program, or service where needed to improve emergency medical services offered in an area;
- b. Expansion or improvement of an existing EMS agency, program, or service;
- c. Replacement of equipment or procurement of new equipment. EMS vehicles purchased with funding from the RSAF shall meet the current state and/or federal standards for the type of vehicle purchased;
- d. Establishment, expansion or improvement of EMS training programs.

**12VAC5-31-2870. Responsibilities of the grantee.**

A. Grantee shall not discriminate in the provisions of its services or in the conduct of its business affairs on the basis of race, color, creed, religion, sex, national origin, or disability.

B. Grantee must comply with these regulations. The grantee shall be responsible for ensuring that item(s) purchased in whole or in part with the use of the state moneys comply with these regulations.

C. Grantee shall be responsible for the preparation and maintenance of proper accounting records that shall be maintained for a period of not less than five years from the end of the grant period.

**12VAC5-31-2880. Application for award.**

A. Applications must be made to the Office of EMS.

B. The Office of EMS will review applications for compliance with the EMS regulations and RSAF policies and procedures. The FARC reviews and grades applications and makes recommendations on funding.

[ **12VAC5-31-2890. (Reserved.)** ]

**12VAC5-31-2900. Awards.**

A. The Office of EMS shall make awards as approved by the commissioner.

B. Grantees will be notified of their award by mail.

C. Funds may be disbursed to the grantee at any time within the grant period. [ ~~1~~ ] Agreement to the award and any attached conditions shall be secured prior to any disbursements.

~~[ 2. Disbursements will be made on a reimbursement basis. Following proof of expenditure for item(s) approved in the award, the authorized agent must submit required documentation (original invoice and signed contract) to the Office of EMS. The Office of EMS will verify submitted documentation and upon approval, authorize the disbursement of the appropriate funds. ]~~

**12VAC5-31-2910. Amount of grant award.**

A. The amount of RSAF General Grant award granted an applicant will not exceed 50% of the cost of the item(s) except in documented and approved cases of hardship. The amount of an RSAF General Grant award shall be based upon the amount requested for the item(s) and state approved pricing determined by the Office of EMS. The amount awarded will not exceed the amount requested by the applicant.

B. Additional funding may be recommended for those unique situations where the applicant has demonstrated the lack of reasonable capability to generate a 50% match

(hardship). The additional funding above a 50% match will be determined by the FARC.

1. Awards identified on the notice of award as being "hardship" (above a 50% match level) require the grantee to purchase from available state contracts.

Awardees, able to demonstrate the ability to purchase at a cost equal to or less than the state contract price, may purchase outside the state contract with prior approval.

2. The FARC shall recommend the percentage of an RSAF General Grant award based upon the review of the application.

**12VAC5-31-2920. Use of funds.**

A. Awards will be made in accordance with §32.1-111.12 of the Code of Virginia.

B. Funds must be used only for the specific items, service, or programs for which they were awarded. This includes any conditions placed upon a grant award.

C. The grantee is required to sign an agreement form attesting that the award funds will be used as granted and meets all conditions placed upon the award.

D. Sale, trade, transfer, or disposal, within five years of vehicles or items specified by the Office of EMS in the notice of award purchased in whole or in part with the use of state moneys requires prior approval by the Office of EMS.

E. Funds must not be used for expenditures or commitments made before the date of the grant award or after the conclusion of the grant period.

F. Funds will not be approved or disbursed for:

1. Leased equipment or vehicle,
2. Equipment or vehicles secured by a lien,
3. Guarantees or warranties,
4. Used equipment or vehicles without prior approval, or
5. Fire suppression apparatus or law-enforcement equipment.

**12VAC5-31-2930. Ownership.**

The title for all equipment, including EMS vehicles, shall be in the name of the organization to which the award has been made or in the name of the local jurisdiction or government entity in which the organization is located. This requirement shall apply to the ownership of equipment purchased in whole or in part with the use of these funds.

**12VAC5-31-2940. Improper expenditures.**

A. An audit revealing expenditures not permitted by the conditions of the award will result in the grantee being required to reimburse the Office of EMS any funds received.

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VA.R. Doc. No. R03-158; Filed November 2, 2007, 1:59 p.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Final Regulation

Title of Regulation: **12VAC30-120. Waivered Services (adding 12VAC30-120-1500 through 12VAC30-120-1550).**

Statutory Authority: §§32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: December 26, 2007.

Agency Contact: Teja Stokes, Division of Long Term Care, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680, or email teja.stokes@dmas.virginia.gov.

#### Summary:

*This regulatory action establishes a new program, the Day Support Waiver for Individuals with Mental Retardation (Day Support Waiver) to provide day support and prevocational services for individuals who are waiting to receive services under the Mental Retardation Waiver (MR Waiver). The regulatory action contains definitions of MR Day Support Waiver terms; contains general coverage and requirements; outlines individual eligibility requirements; defines general requirements for home and community-based participating providers; defines participation standards for home and community-based waiver services participating providers; and further defines the covered services and outlines requirements for providers of these services.*

*Changes to the proposed regulation are based upon both public comment and the agency's desire to align particular services that are similar in other waivers. There are definitions added for "date of need" and "supported employment" with substantial language added describing newly covered supported employment services. A change is made in the slot allocation process from a predominately state controlled to a predominately locality controlled process. Although the state will continue to allocate initial slots to localities, slot vacancies will be filled at the local, rather than the state level. The basic maintenance needs figure for an individual was changed from 100% of Supplemental Security Income to 165% of Supplemental Security Income. In addition, various time references are changed into business day references.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

B. An agency providing false, misleading or improper information to the Office of EMS will be ineligible for future grants for a period of five years.

#### **12VAC5-31-2950. Modification of an award.**

Any changes in the project, including any changes in the approved item(s), shall be permitted only by modification of the award.

1. The grantee must request in writing the specific modifications desired and the reasons and circumstances necessitating such a request to the Office of EMS.

2. The [ ~~Office of EMS commissioner~~ ] may modify, approve or deny the request for modification.

#### **12VAC5-31-2960. Suspension of an award.**

A. The [ ~~Office of EMS commissioner~~ ] may suspend an award and all disbursements of funds attached pending an investigation [ and following an informal fact-finding conference as defined in the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) ].

B. There shall exist reasonable cause for suspension prior to such action by the [ ~~Office of EMS commissioner~~ ]. Such cause shall include:

1. Failure to comply with these regulations.

2. Violation of the terms of any conditions or agreements attached to an award, or

3. A reasonable belief by the [ ~~Office of EMS commissioner~~ ] that any such violations might otherwise continue unabated.

C. The Office of EMS shall notify the grantee of the suspension by certified mail to the last known address.

D. A suspension shall take effect immediately upon receipt of notification unless otherwise specified. A suspension shall remain in effect until reinstated or revoked by the [ ~~Office of EMS commissioner~~ ].

#### **12VAC5-31-2970. Revocation of an award.**

The [ ~~Office of EMS commissioner~~ ] may revoke an award and all disbursements of funds attached after [ ~~a hearing~~ an informal fact-finding conference as defined in the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) ] or waiver thereof.

1. Cause. There must exist reasonable cause for revocation prior to such action by the [ ~~Office of EMS commissioner~~ ].

2. Notification. The Office of EMS must notify the grantee of the revocation by certified mail to the last known address.

3. Period of [ ~~Effect~~ effect ]. A revocation shall be permanent unless and until overturned on appeal.

## Part X

Day Support Waiver for Individuals With Mental Retardation**12 VAC 30-120-1500. Definitions.**

The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise:

"Appeal" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Behavioral health authority" or "BHA" means the local agency, established by a city or county under Chapter 6 (§37.2-600 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the locality that it serves.

"Case management" means the assessing and planning of services; linking the individual to services and supports identified in the consumer service plan; assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources; coordinating services and service planning with other agencies and providers involved with the individual; enhancing community integration; making collateral contacts to promote the implementation of the consumer service plan and community integration; monitoring to assess ongoing progress and ensuring services are delivered; and education and counseling that guides the individual and develops a supportive relationship that promotes the consumer service plan.

"Case manager" means the individual who performs case management services on behalf of the community services board or behavioral health authority, and who possesses a combination of mental retardation work experience and relevant education that indicates that the individual possesses the knowledge, skills and abilities as established by the Department of Medical Assistance Services in 12VAC30-50-450.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Community services board" or "CSB" means the local agency, established by a city or county or combination of counties or cities under Chapter 5 (§37.2-500 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Comprehensive assessment" means the gathering of relevant social, psychological, medical, and level of care

information by the case manager and is used as a basis for the development of the consumer service plan.

"Consumer service plan" or "CSP" means documents addressing needs in all life areas of individuals who receive Day Support Waiver services, and is comprised of individual service plans as dictated by the individual's health care and support needs. The case manager incorporates the individual service plans in the CSP.

[ "Date of need" means the date of the initial eligibility determination assigned to reflect that the individual is diagnostically and functionally eligible for the waiver and is willing to begin services within 30 days. The date of need is not changed unless the person is subsequently found ineligible or withdraws their request for services. ]

"Day support [ services ]" means training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home in which the individual resides. Day support services shall focus on enabling the individual to attain or maintain his maximum functional level.

"Day Support Waiver for Individuals with Mental Retardation" or "Day Support Waiver" [ is means ] the program that provides day support [ , and ] prevocational services [ , and supported employment ] to individuals on the Mental Retardation Waiver waiting list who have been assigned a Day Support Waiver slot.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DMHMRSAS staff" means persons employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Enroll" means that the individual has been determined by the case manager to meet the eligibility requirements for the Day Support Waiver and DMHMRSAS has verified the availability of a Day Support Waiver slot for that individual, and DSS has determined the individual's Medicaid eligibility for home and community-based services.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal guidelines that prescribe preventive and treatment services for Medicaid-eligible children as defined in 12VAC30-50-130.

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"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to §1915(c) of the Social Security Act to be offered to persons with mental retardation who would otherwise require the level of care provided in an Intermediate Care Facility for the Mentally Retarded (ICF/MR).

"Individual" means the person receiving the services or evaluations established in these regulations.

"Individual service plan" or "ISP" means the service plan related solely to the specific waiver service. Multiple ISPs help to comprise the overall consumer service plan.

"Intermediate Care Facility for the Mentally Retarded" or "ICF/MR" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an intermediate care facility for the mentally retarded and persons with related conditions. These facilities must address the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, and must provide active treatment.

"Mental retardation" or "MR" means mental retardation as defined by the American Association on Mental Retardation (AAMR).

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and DMHMRSAS, and has a current, signed provider participation agreement with DMAS.

"Preauthorized" means that an individual service has been approved by DMHMRSAS prior to commencement of the service by the service provider for initiation and reimbursement of services.

"Prevocational services" means services aimed at preparing an individual for paid or unpaid employment, but are not job-task oriented. Prevocational services are provided to individuals who are not expected to be able to join the general work force without supports or to participate in a transitional sheltered workshop within one year of beginning waiver services (excluding supported employment programs). The services do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance, task completion, problem solving and safety. Compensation, if provided, is less than 50% of the minimum wage.

"Slot" means an opening or vacancy of waiver services for an individual.

"State Plan for Medical Assistance" or "Plan" means the Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their

limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

[ "Supported employment" means work in settings in which persons without disabilities are typically employed. It includes training in specific skills related to paid employment and the provision of ongoing or intermittent assistance and specialized supervision to enable an individual with mental retardation to maintain paid employment. ]

## **12VAC30-120-1510. General coverage and requirements for Day Support Waiver services.**

A. Waiver service populations. Home and community-based waiver services shall be available through a §1915(c) of the Social Security Act waiver for individuals with mental retardation who have been determined to require the level of care provided in an ICF/MR.

### B. Covered services.

1. Covered services shall include day support services [ ~~and~~ , ] prevocational services [ and supported employment services ].

2. These services shall be appropriate and necessary to maintain the individual in the community. Federal waiver requirements provide that the average per capita fiscal year expenditures under the waiver must not exceed the average per capita expenditures for the level of care provided in an ICF/MR under the State Plan that would have been provided had the waiver not been granted.

3. Waiver services shall not be furnished to individuals who are inpatients of a hospital, nursing facility, ICF/MR, or inpatient rehabilitation facility. Individuals with mental retardation who are inpatients of these facilities may receive case management services as described in 12VAC30-50-440. The case manager may recommend waiver services that would promote exiting from the institutional placement; however, these services shall not be provided until the individual has exited the institution.

4. Under this §1915(c) waiver, DMAS waives §1902(a)(10)(B) of the Social Security Act related to comparability.

C. Appeals. Individual appeals shall be considered pursuant to 12VAC30-110-10 through 12VAC30-110-380. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

### D. Slot allocation.

1. DMHMRSAS will maintain one waiting list, the MR Waiver waiting list described in Part IV (12VAC30-120-211 et seq.) of this chapter, which will be used to assign slots in both the MR Waiver and Day Support Waiver. For Day Support Waiver services, [ ~~DMHMRSAS will assign~~ ] slots [ will be assigned ] based on the [ application ] date [ of need ] reported by the case manager when the

individual was placed on the MR Waiver waiting list ~~[ while assuring that each CSB has at least one Day Support Waiver slot ]~~. Individuals interested in receiving Day Support Waiver services who are not currently on the MR Waiver waiting list may apply for services through the local CSB and if found eligible will be placed on the MR Waiver waiting list until a slot is available.

2. Each CSB will be assigned one Day Support Waiver slot by DMHMRSAS. ~~[ This slot will remain a CSB slot that, when vacated, will be offered to the next individual on the MR Waiver waiting list from that CSB. ]~~ The remaining slots will be distributed to the ~~[ CSBs by DMHMRSAS based on the statewide CSBs/BHAs based on the percentage of individual cases when compared to the statewide total of cases on the ]~~ MR Waiver waiting list. ~~[ When vacated, these slots will be assigned by DMHMRSAS to the next individual on the waiting list, based upon the application date. All slots shall be allocated based on the individual's date of need and will remain CSB/BHA slots that, when vacated, will be offered to the next individual on the MR Waiver waiting list from that CSB/BHA based upon the date of need. ]~~

3. Individuals may remain on the MR Waiver waiting list while receiving Day Support Waiver services.

E. Reevaluation of service need and utilization review. Case managers shall complete reviews and updates of the CSP and level of care as specified in 12VAC30-120-1520 D. Providers shall meet the documentation requirements as specified in 12VAC30-120-1530 B.

**12VAC30-120-1520. Individual eligibility requirements.**

A. Individuals receiving services under the Day Support Waiver must meet the following requirements. Virginia will apply the financial eligibility criteria contained in the Title XIX State Plan for Medical Assistance for the categorically needy. Virginia has elected to cover the optional categorically needy groups under 42 CFR 435.211, 435.217, and 435.230. The income level used for 42 CFR 435.211, 435.217 and 435.230 is 300% of the current Supplemental Security Income payment standard for one person.

1. Under the Day Support Waiver, the coverage groups authorized under §1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and meet the institutional level of care criteria. The deeming rules are applied to waiver-eligible individuals as if the individual were residing in an institution or would require that level of care.

2. Virginia shall reduce its payment for home and community-based waiver services provided to an

individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and §1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after the deductions listed below:

a. For individuals to whom §1924(d) applies and for whom Virginia waives the requirement for comparability pursuant to §1902(a)(10)(B), deduct the following in the respective order:

(1) The basic maintenance needs for an individual, which is equal to ~~[ 165% of ]~~ the SSI payment for one person. Due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI.

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with §1924(d) of the Social Security Act.

(3) For an individual with a spouse or children at home, an additional amount for the maintenance needs of the family determined in accordance with §1924(d) of the Social Security Act.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges, and necessary medical or remedial care recognized under state law but not covered under the plan.

b. For individuals to whom §1924(d) does not apply and for whom Virginia waives the requirement for comparability pursuant to §1902(a)(10)(B), deduct the following in the respective order:

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(1) The basic maintenance needs for an individual, which is equal to [ 165% of ] the SSI payment for one person. Due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI.

(2) For an individual with a dependent child or children, an additional amount for the maintenance needs of the child or children, which shall be equal to the Title XIX medically needy income standard based on the number of dependent children.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the State Plan for Medical Assistance.

## B. Assessment and enrollment.

1. To ensure that Virginia's home and community-based waiver programs serve only individuals who would otherwise be placed in an ICF/MR, home and community-based waiver services shall be considered only for individuals with a diagnosis of mental retardation. For the case manager to make a recommendation for waiver services, Day Support Waiver services must be determined to be an appropriate service alternative to delay or avoid placement in an ICF/MR, or promote exiting from either an ICF/MR placement or other institutional placement.

2. The case manager shall recommend the individual for home and community-based waiver services after completion of a comprehensive assessment of the individual's needs and available supports. This assessment process for home and community-based waiver services by the case manager is mandatory before Medicaid will assume payment responsibility of home and community-based waiver services. The comprehensive assessment includes:

a. Relevant medical information based on a medical examination completed no earlier than 12 months prior to beginning waiver services;

b. The case manager's functional assessment that demonstrates a need for each specific service. The functional assessment must be a DMHMRSAS-approved assessment completed no earlier than 12 months prior to beginning waiver services;

c. The level of care required by applying the existing DMAS ICF/MR criteria, Part VI (12VAC30-130-430 et seq.) of 12VAC30-130, completed no more than six months prior to the start of waiver services. The case manager determines whether the individual meets the ICF/MR criteria with input from the individual, family/caregivers, and service and support providers involved in the individual's support in the community; and

d. A psychological evaluation that reflects the current psychological status (diagnosis), current cognitive abilities, and current adaptive level of functioning of the individuals.

3. The case manager shall provide the individual and family/caregiver with the choice of Day Support Waiver services or ICF/MR placement.

4. The case manager shall send the appropriate forms to DMHMRSAS to enroll the individual in the Day Support Waiver or, if no slot is available, to place the individual on the Mental Retardation Waiver waiting list. DMHMRSAS shall only enroll the individual if a slot is available.

## C. Waiver approval process; authorizing and accessing services.

1. Once the case manager has determined an individual meets the criteria for Day Support Waiver services, has determined that a slot is available, and that the individual has chosen this service, the case manager shall submit updated enrollment information to DMHMRSAS to confirm level of care eligibility and the availability of a slot.

2. Once the individual has been enrolled by DMHMRSAS, the case manager will submit a DMAS-122 along with a written confirmation from DMHMRSAS of level of care eligibility, to the local DSS to determine financial eligibility for the waiver program and any patient pay responsibilities.

3. After the case manager has received written notification of Medicaid eligibility by DSS and written enrollment confirmation from DMHMRSAS, the case manager shall inform the individual or family/caregiver so that the CSP can be developed. The individual or individual's family/caregiver will meet with the case manager within 30 calendar days following the receipt of written notification [ of DMHMRSAS enrollment ] to discuss the individual's

needs and existing supports, and to develop a CSP that will establish and document the needed services. The case manager provides the individual and family/caregiver with choice of needed services available under the Day Support Waiver, alternative settings and providers. A CSP shall be developed with the individual based on the assessment of needs as reflected in the level of care and functional assessment instruments and the individual's, family/caregiver's preferences. The CSP development process identifies the services to be rendered to individuals, the frequency of services, the type of service provider or providers, and a description of the services to be offered. Only services [ ~~authorized~~ ] on the CSP [ ~~authorized~~ ] by DMHMRSAS according to DMAS policies will be reimbursed by DMAS.

4. The individual or case manager shall contact [ the service providers ] chosen [ by the individual/family caregiver, as appropriate, ] so that services can be initiated within 60 days of receipt of enrollment confirmation from DMHMRSAS. The service providers in conjunction with the individual, individual's family/caregiver and case manager will develop Individual Service Plans (ISP) for each service. A copy of [ ~~these plans~~ each ISP ] will be submitted to the case manager. The case manager will review and ensure [ ~~the~~ that each ] ISP meets the established service criteria for the identified needs. The ISP from each waiver service provider shall be incorporated into the CSP.

5. If waiver services are not initiated within 60 days from receipt of enrollment confirmation, the case manager must submit written information to DMHMRSAS requesting more time to initiate services. A copy of the request must be provided to the individual or the individual's family/caregiver. DMHMRSAS has the authority to approve the request in 30-day extensions, up to a maximum of four consecutive extensions, or to deny the request to retain the waiver slot for that individual. DMHMRSAS shall provide a written response to the case manager indicating denial or approval of the extension. DMHMRSAS shall submit this response within 10 [ ~~working~~ business ] days of the receipt of the request for extension.

6. The case manager must submit the results of the comprehensive assessment and a recommendation to the DMHMRSAS staff for final determination of ICF/MR level of care and authorization for community-based services. DMHMRSAS shall, within 10 [ ~~working~~ business ] days of receiving all supporting documentation, review and approve, pend for more information, or deny the individual service requests. DMHMRSAS will communicate in writing to the case manager whether the recommended services have been approved and the amounts and type of services authorized or if any have

been denied. Medicaid will not pay for any home and community-based waiver services delivered prior to the authorization date approved by DMHMRSAS if preauthorization is required.

7. Day Support Waiver services may be recommended by the case manager only if:

a. The individual is Medicaid eligible as determined by the local office of the Department of Social Services;

b. The individual has a diagnosis of mental retardation as defined by the American Association on Mental Retardation and would in the absence of waiver services, require the level of care provided in an ICF/MR facility, the cost of which would be reimbursed under the Plan; and

c. The contents of the individual service plans are consistent with the Medicaid definition of each service.

8. All [ ~~consumer service plans~~ CSPs ] are subject to approval by DMAS. DMAS shall be the single state agency authority responsible for the supervision of the administration of the Day Support Waiver and is responsible for conducting utilization review activities. DMHMRSAS shall conduct preauthorization of waiver services.

#### D. Reevaluation of service need.

##### 1. The consumer service plan.

a. The case manager shall update the CSP annually based on relevant, current assessment data; in updating the CSP, the case manager shall work with the individual, the individual's family/caregiver, other service providers, consultants, and other interested parties.

b. The case manager shall be responsible for continuous monitoring of the appropriateness of the individual's services and revisions to the CSP as indicated by the changing needs of the individual. At a minimum, the case manager must review the CSP every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

c. Any modification to the amount or type of services in the CSP must be approved by the individual or family/caregiver and authorized by DMHMRSAS.

##### 2. Review of level of care.

a. The case manager shall complete a reassessment annually, in coordination with the individual, family/caregiver, and service providers. The reassessment shall include an update of the level of care and functional assessment instrument and any other appropriate assessment data. If warranted, the case manager shall coordinate a medical examination and a

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psychological evaluation for the individual. The CSP shall be revised as appropriate.

b. A medical examination must be completed for adults based on need identified by the individual, family/caregiver, provider, case manager, or DMHMRSAS staff. Medical examinations and screenings for children must be completed according to the recommended frequency and periodicity of the EPSDT program.

c. A new psychological evaluation shall be required whenever the individual's functioning has undergone significant change and is no longer reflective of the past psychological evaluation.

3. The case manager will monitor the service providers' ISPs to ensure that all providers are working toward the identified goals of the affected individuals.

4. Case managers will be required to conduct monthly visits at the assisted living facility or approved adult foster care placement for all Day Support Waiver individuals residing in DSS-licensed or DSS-regulated placements.

5. The case manager must request an updated DMAS-122 form from DSS annually and forward a copy of the updated DMAS-122 form to all service providers when obtained.

## **12VAC30-120-1530. General requirements for home and community-based participating providers.**

A. Providers approved for participation shall, at a minimum, perform the following activities:

1. Immediately notify DMAS and DMHMRSAS, in writing, of any change in the information that the provider previously submitted to DMAS and DMHMRSAS;

2. Assure freedom of choice to individuals in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid program at the time the service or services were performed;

3. Assure the individual's freedom to refuse medical care, treatment and services;

4. Accept referrals for services only when staff is available to initiate services and perform such services on an ongoing basis;

5. Provide services and supplies to individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC §2000d et seq.), which prohibits discrimination on the grounds of race, color, or national origin; the Virginians with Disabilities Act (§51.5-1 et seq. of the Code of Virginia); §504 of the Rehabilitation Act of 1973, as amended (29 USC §794), which prohibits discrimination on the basis of a disability; and the

Americans with Disabilities Act, as amended (42 USC §12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications;

6. Provide services and supplies to individuals of the same quality and in the same mode of delivery as provided to the general public;

7. Submit charges to DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by DMAS payment methodology from the individual's authorization date for the waiver services;

8. Use program-designated billing forms for submission of charges;

9. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided:

a. In general, such records shall be retained for at least six years from the last date of service or as provided by applicable state or federal laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of storage location and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia;

10. Agree to furnish information on request and in the form requested to DMAS, DMHMRSAS, the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider premises and records shall survive any termination of the provider agreement;

11. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid;

12. Hold confidential and use for authorized purposes only all medical assistance information regarding individuals served, pursuant to 42 CFR Part 431, Subpart F, 12VAC30-20-90, and any other applicable state or federal law;

13. Notify DMAS when ownership of the provider changes at least 15 calendar days before the date of change;

14. Properly report cases of suspected abuse or neglect. Pursuant to §§63.2-1509 and 63.2-1606 of the Code of Virginia, if a participating provider knows or suspects that a home and community-based waiver service individual is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately from first knowledge to the local DSS adult or child protective services worker and to DMHMRSAS Offices of Licensing and Human Rights as applicable; and

15. Adhere to the provider participation agreement and the DMAS provider manual. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider participation agreements and in the DMAS provider manual.

B. Documentation requirements.

1. The case manager must maintain the following documentation for utilization review by DMAS for a period of not less than six years from each individual's last date of service:

- a. The comprehensive assessment and all CSPs completed for the individual;
- b. All ISPs from every provider rendering waiver services to the individual;
- c. All supporting documentation related to any change in the CSP;
- d. All related communication with the individual, family/caregiver, consultants, providers, DMHMRSAS, DMAS, DSS, DRS or other related parties;
- e. An ongoing log that documents all contacts made by the case manager related to the individual and family/caregiver; and
- f. A copy of the current DMAS-122 form.

2. The service providers must maintain, for a period of not less than six years from the individual's last date of service, documentation necessary to support services billed. DMAS staff shall conduct utilization review of individual-specific documentation. This documentation shall contain, up to and including the last date of service, all of the following:

- a. All assessments and reassessments;
- b. All ISPs developed for that individual and the written reviews;

c. An attendance log that documents the date services were rendered, as well as documentation of the amount and type of services rendered;

d. Appropriate data, contact notes, or progress notes reflecting an individual's status and, as appropriate, progress or lack of progress toward the goals on the ISP;

e. Any documentation to support that services provided are appropriate and necessary to maintain the individual in the home and in the community; and

f. A copy of the current DMAS-122 form.

C. An individual's case manager shall not be the direct staff person or the immediate supervisor of a staff person who provides Day Support Waiver services for the individual.

**12VAC30-120-1540. Participation standards for home and community-based waiver services participating providers.**

A. Requests for provider participation will be screened to determine whether the provider applicant meets the basic requirements for participation.

B. For DMAS to approve provider agreements with home and community-based waiver providers, the following standards shall be met:

- 1. Licensure and certification requirements pursuant to 42 CFR 441.302;
- 2. Disclosure of ownership pursuant to 42 CFR 455.104 and 455.105; and
- 3. The ability to document and maintain individual case records in accordance with state and federal requirements.

C. The case manager must inform the individual of all available waiver [ service ] providers. The individual shall have the option of selecting the provider of his choice from among those providers meeting the individual's needs.

D. DMAS shall be responsible for [ assuring reviewing ] continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for participation agreement renewal with DMAS to provide home and community-based waiver services.

E. A participating provider may voluntarily terminate his participation in Medicaid by providing 30 days' written notification. DMAS may terminate at will a provider's participation agreement on 30 days' written notice as specified in the DMAS participation agreement. DMAS may also immediately terminate a provider's participation agreement if the provider is no longer eligible to participate in the program. Such action precludes further payment by DMAS for services provided to individuals subsequent to the date of termination.

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F. A provider shall have the right to appeal action taken by DMAS [~~Provider appeals shall be considered~~] pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

G. Section 32.1-325 D 2 of the Code of Virginia mandates that "Any such Medicaid agreement or contract shall terminate upon conviction of the provider of a felony." A provider convicted of a felony in Virginia or in any other of the 50 states or Washington, D.C., must, within 30 days, notify the Medicaid Program of this conviction and relinquish its provider agreement. In addition, termination of a provider participation agreement will occur as may be required for federal financial participation.

H. Case manager's responsibility for the Individual Information Form (DMAS-122). It shall be the responsibility of the case management provider to notify DMHMRSAS and DSS, in writing, within five business days of being informed of any of the circumstances described in this subsection:

1. Home and community-based waiver services are initiated.
2. A recipient dies.
3. A recipient is discharged from Day Support Waiver services.
4. Any other circumstances (including hospitalization) that cause home and community-based waiver services to cease or be interrupted for more than 30 days.
5. A selection by the individual or family/caregiver of a different community services board/behavioral health authority providing case management services.

I. Changes or termination of services. DMHMRSAS shall authorize changes to an individual's CSP based on the recommendations of the case [~~management provider manager~~]. Providers of [~~direct service~~ waiver services] are responsible for modifying their Individual Service Plans (ISPs) with the involvement of the individual or family/caregiver, and submitting them to the case manager any time there is a change in the individual's condition or circumstances that may warrant a change in the amount or type of service rendered. The case manager will review the need for a change and may recommend a change to the ISP to the DMHMRSAS staff. DMHMRSAS will review and approve, deny, or pend for additional information the requested change to the individual's ISP, and communicate this to the case manager within 10 [~~working~~ business] days of receiving all supporting documentation regarding the request for change or in the case of an emergency, within [~~72 hours~~ three business days] of receipt of the request for change.

The individual or family/caregiver will be notified, in writing, of the right to appeal the decision or decisions to reduce, terminate, suspend or deny services pursuant to

DMAS client appeals regulations, Part I (12VAC30-110-10 et seq.) of 12VAC 30-110. The case manager must submit this notification to the individual in writing within 10 [~~calendar~~ business] days of the decision. All CSPs are subject to approval by the Medicaid agency.

1. In a nonemergency situation, the participating provider shall give the individual or family/caregiver and case manager [~~12-calendar~~ 10 business] days prior written notice of the provider's intent to discontinue services. The notification letter shall provide the reasons why and the effective date the provider is discontinuing services. The effective date that services will be discontinued shall be at least [~~12-calendar~~ 10 business] days from the date of the notification letter.

2. In an emergency situation, when the health and safety of the individual, other individuals in that setting, or provider personnel is endangered, the case manager and DMHMRSAS must be notified prior to the provider discontinuing services. The [~~12-calendar~~ 10 business] day written notification period shall not be required. If appropriate, the local DSS adult protective services or child protective services and DMHMRSAS Offices of Licensing and Human Rights must be notified immediately.

3. In the case of termination of home and community-based waiver services by the CSB/BHA, DMHMRSAS or DMAS staff, individuals shall be notified of their appeal rights by the case manager pursuant to Part I (12VAC30-110-10 et seq.) of 12VAC30-110. The case manager shall have the responsibility to identify those individuals who no longer meet the level of care criteria or for whom home and community-based waiver services are no longer an appropriate alternative.

**12VAC30-120-1550. Services: day support services [ and , ] prevocational services [ and supported employment services ].**

## A. Service descriptions.

1. Day support means training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home in which the individual resides. Day support services shall focus on enabling the individual to attain or maintain his maximum functional level.

2. Prevocational services means services aimed at preparing an individual for paid or unpaid employment, but are not job-task oriented. Prevocational services are provided to individuals who are not expected to be able to join the general work force without supports or to participate in a transitional sheltered workshop within one year of beginning waiver services (excluding supported employment programs). The services do not include

activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance, task completion, problem solving and safety. Compensation, if provided, is less than 50% of the minimum wage.

[ 3. Supported employment services are provided in work settings where persons without disabilities are employed. It is especially designed for individuals with developmental disabilities, including individuals with mental retardation, who face severe impediments to employment due to the nature and complexity of their disabilities, irrespective of age or vocational potential.

a. Supported employment services are available to individuals for whom competitive employment at or above the minimum wage is unlikely without ongoing supports and who because of their disability need ongoing support to perform in a work setting.

b. Supported employment can be provided in one of two models. Individual supported employment shall be defined as intermittent support, usually provided one-on-one by a job coach to an individual in a supported employment position. Group-supported employment shall be defined as continuous support provided by staff to eight or fewer individuals with disabilities in an enclave, work crew, bench work, or entrepreneurial model. The individual's assessment and CSP must clearly reflect the individual's need for training and supports. ]

## B. Criteria.

1. For day support services, individuals must demonstrate the need for functional training, assistance, and specialized supervision offered primarily in settings other than the individual's own residence that allow an opportunity for being productive and contributing members of communities.

2. For prevocational services, the individual must demonstrate the need for support in skills that are aimed toward preparation of paid employment that may be offered in a variety of community settings.

[ 3. For supported employment, the individual shall have demonstrated that competitive employment at or above the minimum wage is unlikely without ongoing supports, and that because of his disability, he needs ongoing support to perform in a work setting.

a. Only job development tasks that specifically include the individual are allowable job search activities under the Day Support waiver supported employment and only after determining this service is not available from DRS.

b. A functional assessment must be conducted to evaluate the individual in his work environment and related community settings. ]

## C. Service types.

The amount and type of [ day support and prevocational ] services included in the individual's service plan is determined according to the services required for that individual. There are two types of services: center-based, which is provided primarily at one location/building, and noncenter-based, which is provided primarily in community settings. Both types of services may be provided at either intensive or regular levels. [ For supported employment, the ISP must document the amount of supported employment required by the individual. Service providers are reimbursed only for the amount and type of supported employment included in the individual's ISP. ]

D. Intensive level criteria. [ ~~For~~ For day support and prevocational services to ] be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) require physical assistance to meet the basic personal care needs (toileting, feeding, etc); (ii) have extensive disability-related difficulties and require additional, ongoing support to fully participate in programming and to accomplish his service goals; or (iii) require extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral objectives are required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.

## E. Service units.

[ Services Day support, prevocational and group models of supported employment (enclaves, work crews, bench work and entrepreneurial model of supported employment) ] are billed in units. Units shall be defined as:

1. One unit is 1 to 3.99 hours of service a day.

2. Two units are 4 to 6.99 hours of service a day.

3. Three units are 7 or more hours of service a day.

[ 4. Supported employment for individual job placement is provided in one-hour units. ]

## F. Service limitations.

1. There must be separate supporting documentation for each service and each must be clearly differentiated in documentation and corresponding billing.

2. The supporting documentation must provide an estimate of the amount of services required by the individual. Service providers are reimbursed only for the amount and type of services included in the individual's approved ISP based on the setting, intensity, and duration of the service to be delivered.

3. [ Services Day support, prevocational and group models of supported employment services ] shall be limited to a total of 780 units per CSP year. If an individual receives a combination of day support, [ ~~and~~ ] prevocational [ and/or

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supported employment ] services, the combined total shall not exceed 780 units per CSP year.

[ 4. The individual job placement model of supported employment is limited to 40 hours per week. ]

[ 4. 5. ] For day support services:

a. Day support cannot be regularly or temporarily provided in an individual's home or other residential setting (e.g., due to inclement weather or individual illness) without prior written approval from DMHMRSAS.

b. Noncenter-based day support services must be separate and distinguishable from other services.

[ 6. For the individual job placement model, reimbursement of supported employment will be limited to actual documented interventions or collateral contacts by the provider, not the amount of time the individual is in the supported employment situation. ]

G. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, service providers must meet the following requirements:

1. The provider of day support services must be licensed by DMHMRSAS as a provider of day support services. The provider of prevocational services must be a vendor of extended employment services, long-term employment services, or supported employment services for DRS, or be licensed by DMHMRSAS as a provider of day support services.

[ 2. Supported employment shall be provided only by agencies that are DRS vendors of supported employment services; ]

[ 2. 3. ] In addition to any licensing requirements, persons providing [ day support or prevocational ] services are required to participate in training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations prior to providing direct services. All providers of services must pass an objective, standardized test of skills, knowledge, and abilities approved by DMHMRSAS and administered according to DMHMRSAS' defined procedures.

[ 3. 4. ] Required documentation in the individual's record. The provider agency must maintain records of each individual receiving services. At a minimum these records must contain the following:

a. A functional assessment conducted by the provider to evaluate each individual in the service environment and community settings.

b. An ISP that contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports and training needs;

(2) The individual's goals and [ ~~for a training goal~~ ] a sequence of measurable objectives to meet the above identified outcomes;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives as appropriate;

(5) The estimated duration of the individual's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

[ ~~e. d.~~ ] Documentation confirming the individual's attendance and amount of time in services, type of services rendered, and specific information regarding the individual's response to various settings and supports as agreed to in the ISP objectives. An attendance log or similar document must be maintained that indicates the date, type of services rendered, and the number of hours and units provided.

[ ~~d. e.~~ ] Documentation indicating whether [ ~~the~~ day support or prevocational ] services were center-based or noncenter-based.

[ ~~e. f.~~ ] In instances where staff are required to ride with the individual to and from the service in order to provide needed supports as specified in the ISP, the staff time can be billed as day support, [ ~~or~~ ] prevocational [ or supported employment ] services, provided that the billing for this time does not exceed 25% of the total time spent in the day support, [ ~~or~~ ] prevocational [ or supported employment ] activity for that day. Documentation must be maintained to verify that billing for staff coverage during transportation does not exceed 25% of the total time spent in the service for that day.

[ ~~f. g.~~ ] If intensive [ day support or prevocational ] services are requested, documentation indicating the specific supports and the reasons they are needed. For ongoing intensive services, there must be clear documentation of the ongoing needs and associated staff supports.

[ ~~g. h.~~ ] The ISP goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed and the results of the review submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual or family/caregiver.

[ ~~h.~~ i. ] Copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

[ ~~h.~~ j. ] For prevocational [ or supported employment ] services, documentation regarding whether prevocational [ or supported employment ] services are available [ ~~in vocational rehabilitation agencies~~ ] through §110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA). If the individual is not eligible for services through the IDEA, documentation is required only for lack of DRS funding. When services are provided through these sources, the ISP shall not authorize such services as a waiver expenditure.

[ k. ] Prevocational services can only be provided when the individual's compensation is less than 50% of the minimum wage.

VA.R. Doc. No. R05-247; Filed November 2, 2007, 11:22 a.m.

**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

**JOINT BOARDS OF NURSING AND MEDICINE**

**Fast-Track Regulation**

Title of Regulation: **18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-100).**

Statutory Authority: §§54.1-2400 and 54.1-2957.01 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public comments: Public comments may be submitted until 5 p.m. on December 26, 2007.

Effective Date: January 11, 2008.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations. Section 54.1-2957.01 of the Code of Virginia establishes the requirements for supervision of physicians for nurse practitioners exercising prescriptive authority.

Purpose: The purpose of the action is to clarify the requirements for physician supervision, site visits and chart reviews of nurse practitioners prescribing medications to patients. Currently, there is some confusion about the requirement of law and regulation in regard to the requirement for the physician to regularly practice in the same location where the nurse practitioner with prescriptive authority is practicing. The law allows physicians in public health, federally funded clinics or nonprofit health clinics to either practice in the same location or make site visits to that location; physicians who supervise nurse practitioners in private practices must regularly practice in that same location. With the expansion of practices into retail settings, that requirement of law and regulation needed to be further specified to prevent situations in which the practice of a nurse practitioner is not appropriately and legally supervised by a physician in accordance with a practice agreement. Such a clarification is necessary to protect the health and safety of patients who may be receiving care under such agreements.

Rationale For Using Fast-Track Process: The boards have determined that a fast-track process is appropriate because there are no substantive changes proposed. The amendments are intended to restate current requirements in a reorganized format that should be less confusing and lead to clearer understanding and compliance.

Substance: The supervision and site visit requirements are separated into two subsections for practices in public health or nonprofit clinics and for practices in private settings. The physician providing supervision in a private practice is required to regularly practice in the same location as the nurse practitioner; but in other settings, the physician is allowed to make regular site visits.

Issues: The primary advantage to the public is greater oversight and protection by clarifying that a physician supervising the prescriptive authority of a nurse practitioner must regularly practice in the same location. The supervision cannot be remote or electronic; the law and regulation requires the physician to regularly practice at the location where patients are being seen by the nurse practitioner to ensure appropriate prescribing and care are being given. There are no disadvantages to the public.

The primary advantage to the agency and the Commonwealth is greater clarity of the regulations and consistency with the Code to reduce the confusion and misinterpretation by some who have read the rules incorrectly.

This clarification has been given verbally to corporate entities who have inquired about setting up nurse practitioners in clinics set in retail locations. The law and regulation clearly provide that a separate practice setting may not be established for the nurse practitioner, but there may continue to be a lack of understanding about the requirement for physician oversight.

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## Department of Planning and Budget's Economic Impact Analysis:

### Summary of the Proposed Amendments to Regulation

The Boards of Nursing and Medicine (Boards) propose to amend their Regulations Governing Prescriptive Authority for Nurse Practitioners to clarify supervision requirements for certified nurse midwives and nurse practitioners who are "employed by or under contract with local health departments, federally funded comprehensive primary care clinics or non-profit health care clinics."

**Result of Analysis.** The benefits likely exceed the costs for all proposed changes.

**Estimated Economic Impact.** Currently, requirements for supervision of certified nurse midwives and nurse practitioners who are "employed by or under contract with local health departments, federally funded comprehensive primary care clinics or non-profit health care clinics" are listed as an exception to the general provision of this regulation which prohibits the establishment of separate practice settings for nurse practitioners and their supervising physicians. The Boards propose to amend these regulations so that requirements (for the individuals covered by the current exception) are moved to a separate section. The Boards also propose to amend the language of these, now separate requirements, to clarify that only nurse practitioners and certified nurse midwives who work for the listed, mostly public, entities may work in a setting that is separate from that of their supervising physicians.

None of the changes that the Boards are proposing represent a change in current practice. The current language of these regulations seems to be clear in prohibiting private nurse practitioners from practicing in a separate setting from their supervising physicians. The Boards are seeking to further separate and clarify this rule, however, because they have had inquiries from entities who believed such practice was allowed. Because these amendments do not represent a change in current practice, regulated individuals will likely not incur any costs on account of this regulatory action. To the extent that current rules seemed opaque to any interested party, these amendments should provide the benefit of clarity.

**Businesses and Entities Affected.** The Department of Health Professions (DHP) reports that 2,973 nurse practitioners in the Commonwealth currently have prescriptive authority. DHP does not know the exact number of nurse practitioners who work in the public settings listed in the regulations, but reports that their numbers are likely a small fraction of the 2,973.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulatory action.

**Projected Impact on Employment.** This regulatory action will likely have no impact on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

**Small Businesses: Costs and Other Effects.** Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

**Real Estate Development Costs.** This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Boards of Nursing and Medicine concur with the analysis of the Department of Planning and Budget for the proposed regulation, 18VAC90-40, Regulations for Prescriptive Authority for Nurse Practitioners, relating to clarification of requirements for supervision.

### Summary:

*The amendments clarify the supervision requirements for the practice of nurse practitioners within local health departments, federally funded clinics or nonprofit health clinics by distinguishing those requirements for*

*supervision from those for nurse practitioners in other practice settings.*

**18VAC90-40-100. Supervision and site visits.**

Physicians A. In accordance with §54.1-2957.01 of the Code of Virginia, physicians who enter into a practice agreement with a nurse practitioner for prescriptive authority shall:  
~~1. Supervise supervise and direct, at any one time, no more than four nurse practitioners with prescriptive authority.~~

~~2. Regularly B. Except as provided in subsection C of this section, physicians shall regularly practice in any location in which the licensed nurse practitioner exercises prescriptive authority.~~

1. A separate practice setting may not be established for the nurse practitioner. Exceptions to this requirement are as follows:

~~a. A separate office practice may be established for a certified nurse midwife or for a nurse practitioner employed by or under contract with local health departments, federally funded comprehensive primary care clinics, or nonprofit health care clinics or programs.~~

~~b. Physicians who do not regularly practice at the same location with the nurse practitioner and who provide supervisory services to such separate practices shall make regular site visits for consultation and direction for appropriate patient management. The site visits shall occur in accordance with the practice agreement, but no less frequently than once a quarter.~~

~~3. Conduct 2. A supervising physician shall conduct a monthly, random review of patient charts on which the nurse practitioner has entered a prescription for an approved drug or device.~~

C. Physicians who practice with a certified nurse midwife or with a nurse practitioner employed by or under contract with local health departments, federally funded comprehensive primary care clinics, or nonprofit health care clinics or programs shall:

1. Either regularly practice at the same location with the nurse practitioner or provide supervisory services to such separate practices by making regular site visits for consultation and direction for appropriate patient management. The site visits shall occur in accordance with the protocol, but no less frequently than once a quarter.

2. Conduct a monthly, random review of patient charts on which the nurse practitioner has entered a prescription for an approved drug or device.

VA.R. Doc. No. R08-816; Filed November 5, 2007, 5:18 p.m.

**BOARD OF LONG-TERM CARE ADMINISTRATORS**

**Final Regulation**

Title of Regulation: **18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (adding 18VAC95-30-10 through 18VAC95-30-210).**

Statutory Authority: §§54.1-2400 and 54.1-3102 of the Code of Virginia.

Effective Date: January 2, 2008.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone 804-367-4424, FAX 804-527-4413, or email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

Summary:

*Regulations for the licensure of assisted living facility administrators include requirements for initial licensure to include a minimum of 30 hours of college-level courses or completion of a LPN or RN training program, training in assisted living care, and passage of a national credentialing examination. Persons who have been serving as an administrator or assistant administrator of an assisted living facility or as a regional administrator with on-site supervisory experience for two of the four years immediately preceding the effective date of these regulations will be able to apply for licensure with documentation of their service and passage of the national examination.*

*Provisions are also adopted for licensure by endorsement of persons who have held a license, certification or registration in another state or who have comparable credentials. Regulations also set out requirements for an administrator-in-training program including registration of persons who serve as preceptors, the number of hours to be completed, the program content, and approved facilities for training.*

*Fees are established for applicants and licensees, which are the same as those charged under the same board for nursing home administrators. For annual renewal of licensure, there are provisions for 20 hours of continuing education and for recognition and documentation of approved courses. Finally, the regulations set out the acts of unprofessional conduct that may cause the board to refuse to license an applicant or to take some disciplinary action against a licensee.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

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## Chapter 30

### Regulations Governing the Practice of Assisted Living Facility Administrators

#### [ Part I

#### General Provisions ]

#### **18VAC95-30-10. Definitions.**

A. The following words and terms when used in this chapter shall have the definitions ascribed to them in §54.1-3100 of the Code of Virginia:

"Assisted living facility"

"Assisted living facility administrator"

"Board"

B. The following words and terms when used in this chapter shall have the following meanings unless the context indicates otherwise:

[ "ALF AIT" means an assisted living facility administrator-in-training. ]

"Domains of practice" means the content areas of tasks, knowledge and skills necessary for administration of a residential care/assisted living facility as approved by the National Association of Boards of Examiners of Long Term Care Administrators.

"NAB" means the National Association of Boards of Examiners of Long Term Care Administrators.

#### **18VAC95-30-20. Posting of license.**

Each licensee shall post his license in a main entrance or place conspicuous to the public in each facility in which the licensee is administrator-of-record.

#### **18VAC95-30-30. Accuracy of information.**

A. All changes of mailing address or name shall be furnished to the board within 30 days after the change occurs.

B. All notices required by law and by this chapter to be mailed by the board to any licensee shall be validly given when mailed to the latest address on file with the board and shall not relieve the licensee, trainee, or preceptor of the obligation to comply.

#### **18VAC95-30-40. Required fees.**

A. The applicant or licensee shall submit all fees below that apply:

- |  |              |
|--|--------------|
| <u>1. [ <del>ALF AIT</del> ALF AIT ] program application</u>   | <u>\$185</u> |
| <u>2. Preceptor application</u>                                | <u>\$125</u> |
| <u>3. Licensure application</u>                                | <u>\$200</u> |
| <u>4. Verification of licensure requests from other states</u> | <u>\$25</u>  |

5. Assisted living facility administrator license renewal \$225

6. Preceptor renewal \$100

7. Penalty for assisted living facility administrator late renewal \$65

8. Penalty for preceptor late renewal \$35

9. Assisted living facility administrator reinstatement \$315

10. Preceptor reinstatement \$150

11. Duplicate license \$15

12. Duplicate wall certificates \$25

13. Returned check \$35

B. Fees shall not be refunded once submitted.

C. Examination fees are to be paid directly to the service [ ~~or services~~ ] contracted by the board to administer the [ ~~examinations examination~~ ].

#### **18VAC95-30-50. Practice by a licensed nursing home administrator.**

Pursuant to §54.1-3102 B of the Code of Virginia, a person who holds a license as a nursing home administrator issued by the board may engage in the general administration of an assisted living facility.

#### Part II

#### Renewals and Reinstatements

#### **18VAC95-30-60. Renewal requirements.**

A. A person who desires to renew his license or preceptor registration for the next year shall, not later than the expiration date of March 31 of each year, submit a completed renewal application and fee.

B. The renewal application and fee shall be received no later than the expiration date. Postmarks shall not be considered.

C. An assisted living facility administrator license or preceptor registration not renewed by the expiration date shall be invalid.

#### **18VAC95-30-70. Continuing education requirements.**

A. In order to renew an assisted living administrator license, an applicant shall attest on his renewal application to completion of 20 hours of approved continuing education for each renewal year.

1. Up to 10 of the 20 hours may be obtained through Internet or self-study courses and up to 10 continuing education hours in excess of the number required may be transferred or credited to the next renewal year.

2. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following initial licensure.

B. In order for continuing education to be approved by the board, it shall be related to the domains of practice for residential care/assisted living and approved or offered by NAB, an accredited educational institution or a governmental agency.

C. Documentation of continuing education.

1. The licensee shall retain in his personal files for a period of three renewal years complete documentation of continuing education including evidence of attendance or participation as provided by the approved sponsor for each course taken.

2. Evidence of attendance shall be an original document provided by the approved sponsor and shall include:

a. Date or dates the course was taken;

b. Hours of attendance or participation;

c. Participant's name; and

d. Signature of an authorized representative of the approved sponsor.

3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion on forms provided by the board and evidence of attendance or participation as provided by the approved sponsor.

D. The board may grant an extension of up to one year or an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the administrator, such as a certified illness, a temporary disability, mandatory military service, or officially declared disasters.

### **18VAC95-30-80. Late renewal.**

A. A person who fails to renew his license or preceptor registration by the expiration date shall, within one year of the initial expiration date:

1. Submit the renewal notice or request renewal by mail to the board;

2. Submit the applicable renewal fee and penalty fee;

3. Provide evidence as may be necessary to establish eligibility for renewal.

B. The documents required in subsection A of this section shall be received in the board office within one year of the initial expiration date. Postmarks shall not be considered.

### **18VAC95-30-90. Reinstatement for an assisted living facility administrator license or preceptor registration.**

A. The board may reinstate an assisted living facility administrator license or preceptor registration that was not renewed within one year of the initial expiration date.

B. An applicant for assisted living facility administrator license reinstatement shall apply on a reinstatement form provided by the board, submit the reinstatement fee, and provide one of the following:

1. Evidence of the equivalent of 20 hours of continuing education for each year since the last renewal, not to exceed a total of 60 hours.

2. Evidence of active practice in another state or U.S. jurisdiction or in the U.S. armed services during the period licensure in Virginia was lapsed.

3. Evidence of requalifying for licensure by meeting the requirements prescribed in 18VAC95-30-100 and 18VAC95-30-110.

C. An applicant for preceptor reinstatement shall apply on a reinstatement form provided by the board, submit the reinstatement fee, and meet the current requirements for a preceptor in effect at the time of application for reinstatement.

### Part III

#### Requirements for Licensure

### **[ 18VAC95-30-95. Licensure of current administrators.**

A. Until January 2, 2009, any person who has served in one of the following positions for the period of two of the four years immediately preceding the effective date of these regulations [ (January 2, 2008), ] may be licensed by the board:

1. A full-time administrator of record in accordance with requirements of 22VAC40-72-200, or an assistant administrator in an assisted living facility licensed in the Commonwealth of Virginia, as documented on an application for licensure; or

2. A full-time regional administrator with onsite supervisory responsibilities for one or more assisted living facilities with at least two years of previous experience as the administrator of an assisted living facility as documented on an application for licensure.

B. Persons who are applying for licensure based on experience as an administrator as specified in subsection A of this section shall document a passing grade on the national credentialing examination for administrators of assisted living facilities approved by the board. ]

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## **18VAC95-30-100. Educational and training requirements for initial licensure.**

~~[ A. Until (date of one year from the effective date of the regulations), any person who has served full time as the administrator of record in accordance with requirements of 22VAC40-71-60 and 22VAC40-71-630, or an assistant administrator in an assisted living facility licensed in the Commonwealth of Virginia, for the period of two of the three years immediately preceding the effective date of these regulations may be licensed by the board if he provides:~~

~~1. Documentation that he was the full time administrator of record or the full time assistant administrator for an assisted living facility licensed in the Commonwealth of Virginia for the specified time period; and~~

~~2. Documentation of a passing grade on a state examination approved by the board.~~

~~B. A.] To be qualified for initial licensure as an assisted living facility administrator, an applicant shall hold a high school diploma or general education diploma [ (GED) ] and hold one of the following qualifications:~~

~~[ 1. Administrator-in-training program.~~

~~a. Complete at least 30 semester hours in an accredited college or university in any subject and 640 hours in an ALF AIT as specified in 18VAC95-30-150;~~

~~b. Complete an educational program as a licensed practical nurse and hold a current, unrestricted license or multistate licensure privilege and 640 hours in an ALF AIT;~~

~~c. Complete an educational program as a registered nurse and hold a current, unrestricted license or multistate licensure privilege and 480 hours in an ALF AIT;~~

~~d. Complete at least 30 semester hours in an accredited college or university with courses in the content areas of (i) client/resident care; (ii) human resources management; (iii) financial management; (iv) physical environment; and (v) leadership and governance; and 320 hours in an ALF AIT;~~

~~e. Hold a master's or a baccalaureate degree in health care-related field or a comparable field that meets the requirements of subsection B of this section with no internship or practicum and 320 hours in an ALF AIT program; or~~

~~f. Hold a master's or baccalaureate degree in an unrelated field and 480 hours in an ALF AIT program; or~~

~~2. Certificate program.~~

~~Hold a baccalaureate or higher degree in a field unrelated to health care from an accredited college or university and successfully complete a certificate program with a minimum of 21 semester hours study in a health care~~

~~related field that meets course content requirements of subsection B of this section from an accredited college or university and successfully complete not less than a 320-hour internship or practicum that addresses the domains of practice as specified in 18VAC95-30-160 in a licensed assisted living facility as part of the certificate program under the supervision of a preceptor; or ]~~

~~[ ~~1. 3. ] Degree and practical experience.~~~~

~~Hold a baccalaureate or higher degree in a health care-related field that meets the course content requirements of subsection [ ~~C B~~ ] of this section from an accredited college or university and have completed not less than a 320-hour internship [ or practicum ] that addresses the Domains of Practice as specified in 18VAC95-30-160 in a licensed assisted living facility as part of the degree program under the supervision of a preceptor [ ~~registered by the board; or~~ ].~~

~~[ ~~2. Certificate program.~~~~

~~Hold a baccalaureate or higher degree in a field unrelated to health care from an accredited college or university and successfully complete a certificate program with a minimum of 21 semester hours study in a health care related field that meets course content requirements of subsection C of this section from an accredited college or university and successfully complete not less than a 320-hour internship that addresses the Domains of Practice as specified in 18VAC95-30-160 in a licensed assisted living facility as part of the certificate program under the supervision of a preceptor registered by the board; or~~

~~3. Administrator in training program.~~

~~a. Complete at least 30 semester hours in an accredited college or university with courses in the content areas of (i) Client/resident care; (ii) Human resources management; (iii) Financial management; (iv) Physical environment; and (v) Leadership and governance; and 500 hours in an administrator in training program within one year; or~~

~~b. Complete at least 30 semester hours in an accredited college or university in any subject; and 1,000 hours in an administrator in training program within two years;~~

~~C. B. ]. To meet the educational requirements for a degree in a health care-related field, an applicant must provide a transcript from an accredited college or university that documents successful completion of a minimum of 21 semester hours of coursework concentrated on the administration and management of health care services to include a minimum of six semester hours in the content area set out in subdivision 1 of this subsection, three semester hours in each of the content areas in subdivisions 2 through 5 of this subsection, and three semester hours for an internship [ or practicum ].~~

1. Resident/client services management;
2. Human resource management;
3. Financial management;
4. Physical environment management;
5. Leadership and governance.

**18VAC95-30-110. Examination requirement for initial licensure.**

To be licensed under [ ~~subsection B of 18VAC95-30-95 or~~ 18VAC95-30-100, an applicant shall provide evidence of [ a ] passing [ ~~grades on examinations acceptable to the board to include: 1. A grade on the~~ ] national credentialing examination for administrators of assisted living facilities [ ~~;~~ and 2. A jurisprudence examination on the laws and regulations governing the practice of an assisted living facility administrator in Virginia approved by the board ] .

**18VAC95-30-120. Qualifications for licensure by endorsement [ or credentials ] .**

[ A. If applying from any state or the District of Columbia in which a license, certificate or registration is required to be the administrator of an assisted living facility, an applicant for licensure by endorsement shall hold a current, unrestricted license, certificate or registration from that state or the District of Columbia. If applying from a jurisdiction that does not have such a requirement, an applicant may apply for licensure by credentials, and no evidence of licensure, certification or registration is required.

B. ] The board may issue a license to any person who:

1. [ ~~Holds a current, unrestricted license, certificate or registration as an assisted living facility administrator from any state or the District of Columbia~~ Meets the provisions of subsection A of this section ];
2. Has not been the subject of a disciplinary action taken by any jurisdiction in which he was found to be in violation of law or regulation governing practice and which, in the judgment of the board, has not remediated;
3. Meets one of the following conditions:
  - a. Has practiced as the administrator of record in an assisted living facility that provides assisted living care as defined in §63.2-100 of the Code of Virginia for at least two of the [ ~~three~~ four ] years immediately preceding application to the board; or
  - b. Has education and experience substantially equivalent to qualifications required by this chapter and has provided written evidence of those qualifications at the time of application for licensure; and
4. Has successfully [ ~~completed a state examination on the laws and regulations governing the practice of an assisted~~

~~living facility administrator~~ passed a national credentialing examination for administrators of assisted living facilities approved by the board ] .

**18VAC95-30-130. Application package.**

A. An application for licensure shall be submitted after the applicant completes the qualifications for licensure.

B. An individual seeking licensure as an assisted living facility administrator or registration as a preceptor shall submit simultaneously:

1. A completed application as provided by the board;
2. Additional documentation as may be required by the board to determine eligibility of the applicant; [ ~~and~~ ]
3. The applicable fee [ ~~;~~ and
4. An attestation that he has read and understands and will remain current with the applicable Virginia laws and the regulations relating to assisted living facilities. ]

C. With the exception of school transcripts, examination scores, and verifications from other state boards, all parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for one year, after which time the application shall be destroyed and a new application and fee shall be required.

Part IV

Administrator-in-Training Program

**18VAC95-30-140. Training qualifications.**

A. To be approved as an [ ALF ] administrator-in-training, a person shall:

1. [ ~~Have received a passing grade on a total of 30 semester hours of education from an accredited college or university~~ Meet the requirements of 18VAC95-30-100 A 1 ];
2. Obtain a preceptor to provide training;
3. Submit the application provided by the board and the fee prescribed in 18VAC95-30-40; and
4. Submit additional documentation as may be necessary to determine eligibility of the applicant and the number of hours required for the [ ~~A.I.T.~~ ALF AIT ] program.

B. With the exception of school transcripts, all required parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for one year after which time the application shall be destroyed and a new application and fee shall be required.

**18VAC95-30-150. Required hours of training.**

A. The [ ~~A.I.T.~~ ALF AIT ] program shall consist of [ ~~1,000~~ ] hours of continuous training [ as specified in 18VAC95-30-100 A 1 ] in a facility as prescribed in 18VAC95-30-170 to be

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completed within 24 months. An extension may be granted by the board on an individual case basis. The board may reduce the required hours for applicants with certain qualifications as prescribed in subsection B ~~and C~~ of this section.

B. An ~~A.I.T.~~ ALF AIT applicant with prior health care work experience may request approval to receive ~~a maximum 500~~ hours of credit toward the total ~~1,000~~ hours as follows:

1. An applicant who has been employed full time for ~~four two~~ of the past ~~five four~~ years immediately prior to application as an assistant administrator in a licensed assisted living facility or nursing home ~~or as a hospital administrator shall complete 320 hours in an ALF AIT~~;

~~2. An applicant who has been employed full time for four of the past five years immediately prior to application as a hospital administrator having responsibilities in all of the following areas:~~

~~a. Regulatory/compliance;~~

~~b. Fiscal;~~

~~c. Supervisory;~~

~~d. Personnel; and~~

~~e. Management; or~~

~~3. 2. ] An applicant who holds a license [ or a multistate licensure privilege ] as a [ registered ] nurse and who has held an administrative level supervisory position in nursing for at least [ four two ] of the past [ five four ] consecutive years [ 3 ] in a [ training facility as prescribed in 18VAC95-30-170, licensed assisted living facility or nursing home shall complete 320 hours in an ALF AIT; or~~

~~3. An applicant who holds a license or a multistate licensure privilege as a licensed practical nurse and who has held an administrative level supervisory position in nursing for at least two of the past four consecutive years in a licensed assisted living facility or nursing home shall complete 480 hours in an ALF AIT. ]~~

~~[ C. An A.I.T. applicant with the following educational qualifications shall meet these requirements:~~

~~1. An applicant with a master's or a baccalaureate degree in health care related field or a comparable field that meets the requirements of subsection C of 18VAC95-30-100 with no internship shall complete 320 hours in an A.I.T. program;~~

~~2. An applicant with a master's degree in an unrelated field shall complete 320 hours in an A.I.T. program; or~~

~~3. An applicant with a baccalaureate degree in an unrelated field shall complete 500 hours in an A.I.T. program. ]~~

## **18VAC95-30-160. Required content of an [ ALF ] administrator-in-training program.**

A. Prior to the beginning of the training program, the preceptor shall develop and submit for board approval a training plan that shall include and be designed around the specific training needs of the administrator-in-training. The training plan shall include the tasks and the knowledge and skills required to complete those tasks as approved by NAB as the domains of practice for residential care/assisted living in effect at the time the training is being provided. An [ A.I.T. ALF AIT ] program shall include training in each of the learning areas in the domains of practice.

B. An [ A.I.T. ALF AIT ] shall be required to serve weekday, evening, night and weekend shifts and to receive training in all areas of an assisted living facility operation.

## **18VAC95-30-170. Training facilities.**

Training in an [ A.I.T. ALF AIT ] program or for an internship [or practicum] shall be conducted only in:

1. An assisted living facility or unit licensed by the Virginia Board of Social Services or by a similar licensing body in another jurisdiction;

2. An assisted living facility owned or operated by an agency of any city, county, or the Commonwealth or of the United States government; or

3. An assisted living unit located in and operated by a licensed hospital as defined in §32.1-123 of the Code of Virginia, a state-operated hospital, or a hospital licensed in another jurisdiction.

## **18VAC95-30-180. Preceptors.**

A. Training in an [ A.I.T. ALF AIT ] program [ or an internship ] shall be under the supervision of a preceptor who is registered or recognized by a licensing board.

B. To be registered by the board as a preceptor, a person shall:

1. Hold a current, unrestricted Virginia assisted living facility administrator or nursing home administrator license;

2. Be employed full-time as an administrator in a training facility or facilities for a minimum of two of the past [ three four ] years immediately prior to registration [ or be a regional administrator with on-site supervisory responsibilities for a training facility or facilities ]; and

3. Submit an application and fee as prescribed in 18VAC95-30-40.

C. A preceptor shall:

1. Provide direct instruction, planning and evaluation;

2. Be routinely present with the trainee in the training facility; and

3. Continually evaluate the development and experience of the trainee to determine specific areas needed for concentration.

D. A preceptor may supervise no more than two trainees at any one time.

**18VAC95-30-190. Reporting requirements.**

A. The preceptor shall maintain progress reports on forms prescribed by the board for each month of training.

B. The trainee's certificate of completion plus the accumulated original monthly reports shall be submitted by the preceptor to the board within 30 days following the completion of the program.

**18VAC95-30-200. Interruption or termination of program.**

A. If the program is interrupted because the registered preceptor is unable to serve, the trainee shall notify the board within five working days and shall obtain a new preceptor who is registered with the board within 60 days.

1. Credit for training shall resume when a new preceptor is obtained and approved by the board.

2. If an alternate training plan is developed, it shall be submitted to the board for approval before the trainee resumes training.

B. If the training program is terminated prior to completion, the trainee and the preceptor shall each submit a written explanation of the causes of program termination to the board within five working days. The preceptor shall also submit all required monthly progress reports completed prior to termination.

Part V

Refusal, Suspension, Revocation and Disciplinary Action

**18VAC95-30-210. Unprofessional conduct.**

The board may refuse to admit a candidate to an examination, refuse to issue or renew a license or approval to any applicant, suspend a license for a stated period of time or indefinitely, reprimand a licensee, place his license on probation with such terms and conditions and for such time as it may designate, impose a monetary penalty, or revoke a license for any of the following causes:

1. Conducting the practice of assisted living administration in such a manner as to constitute a danger to the health, safety, and well-being of the residents, staff, or public;

2. Failure to comply with federal, state, or local laws and regulations governing the operation of an assisted living facility;

3. Conviction of a felony or any misdemeanor involving abuse, neglect or moral turpitude;

4. Failure to comply with any regulations of the board; or

5. Inability to practice with skill or safety.

The forms used in administering 18VAC95-30, Regulations Governing the Practice of Assisted Living Facility Administrators are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Board for Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Checklist for Endorsement Application to Practice as an Assisted Living Administrators (eff. [ 10/07 1/08 ])

Checklist for Licensure by Experience to Practice as an Assisted Living Administrators (eff. [ 10/07 1/08 ])

Checklist for Licensure by Examination to Practice as an Assisted Living Administrator (eff. [ 10/07 1/08 ])

Assisted Living Administrator Application for Licensure (eff. [ 10/07 1/08 ])

Assisted Living Administrator Administrator-in-Training Application (eff. [ 10/07 1/08 ])

Monthly Report of Assisted Living Facility Administrator-in-Training (eff. [ 8/07 1/08 ])

Completion of Assisted Living Facility Administrator-in-Training (eff. [ 8/07 1/08 ])

Endorsement Certification Form (eff. [ 8/07 1/08 ])

Assisted Living Administrator Preceptor Application ( [ 10/07 eff. 1/08 ])

VA.R. Doc. No. R06-42; Filed November 5, 2007, 5:19 p.m.

**REAL ESTATE APPRAISER BOARD**

**Final Regulation**

REGISTRAR'S NOTICE: The Real Estate Appraiser Board has claimed an exemption from the Administrative Process Act in accordance with §2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Real Estate Appraiser Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

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# Regulations

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**Title of Regulation:** 18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-10, 18VAC130-20-30, 18VAC130-20-60, 18VAC130-20-110, 18VAC130-20-170, 18VAC130-20-180, 18VAC130-20-210, 18VAC130-20-220, 18VAC130-20-230).

**Statutory Authority:** §§ 54.1-201 and 54.1-2013 of the Code of Virginia.

**Effective Date:** January 1, 2008.

**Agency Contact:** Christine Martine, Executive Director, Department of Professional and Occupational Regulation, The Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email reappraisers@dpor.virginia.gov.

## Summary:

*Under the provisions of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act, the Appraiser Qualifications Board establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. The board has revised the criteria for qualifying education, the period of time the examination is valid, the type of license a supervising appraiser must hold as well as the number of trainees a supervising appraiser may supervise, and qualifying continuing education effective January 1, 2008. The regulations are being amended to comply with the new federal requirements.*

## 18VAC130-20-10. Definitions.

The following words and terms, when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Accredited colleges, universities, junior and community colleges" means those accredited institutions of higher learning approved by the Virginia Council of Higher Education or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers or a recognized international equivalent.

"Adult distributive or marketing education programs" means those programs offered at schools approved by the Virginia Department of Education or any other local, state, or federal government agency, board or commission to teach adult education or marketing courses.

"Analysis" means a study of real estate or real property other than the estimation of value.

"Appraisal Foundation" means the foundation incorporated as an Illinois Not for Profit Corporation on November 30, 1987, to establish and improve uniform appraisal standards by defining, issuing and promoting such standards.

"Appraisal subcommittee" means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 USC §3301 et seq.), as amended.

"Appraiser" means one who is expected to perform valuation services competently and in a manner that is independent, impartial and objective.

"Appraiser classification" means any category of appraiser which the board creates by designating criteria for qualification for such category and by designating the scope of practice permitted for such category.

"Appraiser Qualifications Board" means the board created by the Appraisal Foundation to establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing and promoting such qualification criteria; to disseminate such qualification criteria to states, governmental entities and others; and to develop or assist in the development of appropriate examinations for qualified appraisers.

"Appraiser trainee" means an individual who is licensed as an appraiser trainee to appraise those properties which the supervising appraiser is permitted to appraise.

"Business entity" means any corporation, partnership, association or other business entity under which appraisal services are performed.

"Certified general real estate appraiser" means an individual who meets the requirements for licensure that relate to the appraisal of all types of real estate and real property and is licensed as a certified general real estate appraiser.

"Certified instructor" means an individual holding an instructor certificate issued by the Real Estate Appraiser Board to act as an instructor.

"Certified residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of any residential real estate or real property of one to four residential units regardless of transaction value or complexity. Certified residential real estate appraisers may also appraise nonresidential properties with a transaction value up to \$250,000.

"Classroom hour" means 50 minutes out of each 60-minute segment. The prescribed number of classroom hours includes time devoted to tests which are considered to be part of the course.

"Distance education" means an educational process based on the geographical separation of provider and student (i.e., CD-ROM, on-line learning, correspondence courses, etc.).

"Experience" as used in this chapter includes but is not limited to experience gained in the performance of traditional appraisal assignments, or in the performance of the following: fee and staff appraisals, ad valorem tax appraisal, review

appraisal, appraisal analysis, real estate consulting, highest and best use analysis, and feasibility analysis/study.

For the purpose of this chapter, experience has been divided into four major categories: (i) fee and staff appraisal, (ii) ad valorem tax appraisal, (iii) review appraisal, and (iv) real estate consulting.

1. "Fee/staff appraiser experience" means experience acquired as either a sole appraiser, as a cosigner, or through disclosure of assistance in the certification in accordance with the Uniform Standards of Professional Appraisal Practice.

Sole appraiser experience is experience obtained by an individual who makes personal inspections of real estate, assembles and analyzes the relevant facts, and by the use of reason and the exercise of judgment, forms objective opinions and prepares reports as to the market value or other properly defined value of identified interests in said real estate.

Cosigner appraiser experience is experience obtained by an individual who signs an appraisal report prepared by another, thereby accepting full responsibility for the content and conclusions of the appraisal.

To qualify for fee/staff appraiser experience, an individual must have prepared written appraisal reports which meet minimum standards. For appraisal reports dated prior to July 1, 1991, these minimum standards include the following (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions):

- a. An adequate identification of the real estate and the interests being appraised;
- b. The purpose of the report, date of value, and date of report;
- c. A definition of the value being appraised;
- d. A determination of highest and best use;
- e. An estimate of land value;
- f. The usual valuation approaches for the property type being appraised or the reason for excluding any of these approaches;
- g. A reconciliation and conclusion as to the property's value;
- h. Disclosure of assumptions or limiting conditions, if any; and
- i. Signature of appraiser.

For appraisal reports dated subsequent to July 1, 1991, the minimum standards for written appraisal reports are those as prescribed in Standard 2 of the Uniform Standards of

Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

2. "Ad valorem tax appraisal experience" means experience obtained by an individual who assembles and analyzes the relevant facts, and who correctly employs those recognized methods and techniques that are necessary to produce and communicate credible appraisals within the context of the real property tax laws. Ad valorem tax appraisal experience may be obtained either through individual property appraisals or through mass appraisals as long as applicants under this category of experience can demonstrate that they are using techniques to value real property similar to those being used by fee/staff appraisers and that they are effectively utilizing the appraisal process.

To qualify for ad valorem tax appraisal experience for individual property appraisals, an individual must have prepared written appraisal reports which meet minimum standards. For appraisal reports dated prior to July 1, 1991, these minimum standards include the following (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions):

- a. An adequate identification of the real estate and the interests being appraised;
- b. The effective date of value;
- c. A definition of the value being appraised if other than fee simple;
- d. A determination of highest and best use;
- e. An estimate of land value;
- f. The usual valuation approaches for the property type being appraised or the reason for excluding any of these approaches;
- g. A reconciliation and conclusion as to the property's value; and
- h. Disclosure of assumptions or limiting conditions, if any.

For appraisal reports dated subsequent to July 1, 1991, the minimum standards for written appraisal reports are those as prescribed in the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

To qualify for ad valorem tax appraisal experience for mass appraisals, an individual must have prepared mass appraisals or have documented mass appraisal files which meet minimum standards. For mass appraisals dated prior to July 1, 1991, these minimum standards include the following (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions):

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- a. An adequate identification of the real estate and the interests being appraised;
- b. The effective date of value;
- c. A definition of the value being appraised if other than fee simple;
- d. A determination of highest and best use;
- e. An estimate of land value; and
- f. Those recognized methods and techniques that are necessary to produce a credible appraisal.

For mass appraisal reports ~~dated subsequent to July 1, 1991~~, the minimum standards for these appraisal reports are those as prescribed in Standard 6 of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

In addition to the preceding, to qualify for ad valorem tax appraisal experience, the applicant's experience log must be attested to by the applicant's supervisor.

3. "Reviewer experience" means experience obtained by an individual who examines the reports of appraisers to determine whether their conclusions are consistent with the data reported and other generally known information. An individual acting in the capacity of a reviewer does not necessarily make personal inspection of real estate, but does review and analyze relevant facts assembled by fee/staff appraisers, and by the use of reason and exercise of judgment, forms objective conclusions as to the validity of fee/staff appraisers' opinions. Reviewer experience shall not constitute more than 1,000 hours of total experience claimed and at least 50% of the review experience claimed must be in field review wherein the individual has personally inspected the real property which is the subject of the review.

To qualify for reviewer experience, an individual must have prepared written reports recommending the acceptance, revision, or rejection of the fee/staff appraiser's opinions, which written reports must meet minimum standards. For appraisal reviews dated prior to July 1, 1991, these minimum standards include the following (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions):

- a. An identification of the report under review, the real estate and real property interest being appraised, the effective date of the opinion in the report under review, and the date of the review;
- b. A description of the review process undertaken;
- c. An opinion as to the adequacy and appropriateness of the report being reviewed, and the reasons for any disagreement;

- d. An opinion as to whether the analyses, opinions, and conclusions in the report under review are appropriate and reasonable, and the development of any reasons for any disagreement;
- e. Signature of reviewer.

For appraisal review reports dated subsequent to July 1, 1991, the minimum standards for these appraisal reports are those as prescribed in Standard 3 of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

Signing as "Review Appraiser" on an appraisal report prepared by another will not qualify an individual for experience in the reviewer category. Experience gained in this capacity will be considered under the cosigner subcategory of fee/staff appraiser experience.

4. "Real estate consulting experience" means experience obtained by an individual who assembles and analyzes the relevant facts and by the use of reason and the exercise of judgment, forms objective opinions concerning matters other than value estimates relating to real property. Real estate consulting experience includes, but is not necessarily limited to, the following:

Absorption Study  
Ad Valorem Tax Study  
Annexation Study  
Assemblage Study  
Assessment Study  
Condominium Conversion Study  
Cost-Benefit Study  
Cross Impact Study  
Depreciation/Cost Study  
Distressed Property Study  
Economic Base Analysis  
Economic Impact Study  
Economic Structure Analysis  
Eminent Domain Study  
Feasibility Study  
Highest and Best Use Study  
Impact Zone Study  
Investment Analysis Study  
Investment Strategy Study  
Land Development Study  
Land Suitability Study  
Land Use Study  
Location Analysis Study  
Market Analysis Study  
Market Strategy Study  
Market Turning Point Analysis  
Marketability Study  
Portfolio Study  
Rehabilitation Study  
Remodeling Study  
Rental Market Study

Right of Way Study  
Site Analysis Study  
Utilization Study  
Urban Renewal Study  
Zoning Study

To qualify for real estate consulting experience, an individual must have prepared written reports which meet minimum standards. For real estate consulting reports dated prior to July 1, 1991, these minimum standards include the following (if any item is not applicable, the applicant shall so state the reasons for the exclusions):

- a. A definition of the problem;
- b. An identification of the real estate under consideration (if any);
- c. Disclosure of the client's objective;
- d. The effective date of the consulting assignment and date of report;
- e. The information considered, and the reasoning that supports the analyses, opinions, and conclusions;
- f. Any assumptions and limiting conditions that affect the analyses, opinions, and conclusions;
- g. Signature of real estate appraiser.

For real estate consulting reports dated subsequent to July 1, 1991, the minimum standards for these appraisal reports are those as prescribed in Standard 4 of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation. Real estate consulting shall not constitute more than 500 hours of experience for any type of appraisal license.

"Inactive license" means a license that has been renewed without meeting the continuing education requirements specified in this chapter. Inactive licenses do not meet the requirements set forth in §54.1-2011 of the Code of Virginia.

"Licensed residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of any noncomplex, residential real estate or real property of one to four residential units, including federally related transactions, where the transaction value is less than \$1 million. Licensed residential real estate appraisers may also appraise noncomplex, nonresidential properties with a transaction value up to \$250,000.

"Licensee" means any individual holding an active license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, certified residential real estate appraiser, licensed residential real estate appraiser, or appraiser trainee as defined, respectively, in §54.1-2009 of the Code of Virginia and in this chapter.

"Local, state or federal government agency, board or commission" means an entity established by any local, federal or state government to protect or promote the health, safety and welfare of its citizens.

"Proprietary school" means a privately owned school offering appraisal or appraisal related courses approved by the board.

"Provider" means accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations.

"Real estate appraisal activity" means the act or process of valuation of real property or preparing an appraisal report.

"Real estate appraisal" or "real estate related organization" means any appraisal or real estate related organization formulated on a national level, where its membership extends to more than one state or territory of the United States.

"Reciprocity agreement" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Registrant" means any corporation, partnership, association or other business entity which provides appraisal services and which is registered with the Real Estate Appraiser Board in accordance with §54.1-2011 E of the Code of Virginia.

"Reinstatement" means having a license or registration restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or registration for another period of time.

"Sole proprietor" means any individual, but not a corporation, partnership or association, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§59.1-69 through 59.1-76 of the Code of Virginia.

"Substantially equivalent" is any educational course or seminar, experience, or examination taken in this or another jurisdiction which is equivalent in classroom hours, course content and subject, and degree of difficulty, respectively, to those requirements outlined in this chapter and Chapter 20.1 (§54.1-2009 et seq.) of Title 54.1 of the Code of Virginia for licensure and renewal.

"Supervising appraiser" means any individual holding a license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, certified residential real estate appraiser, or licensed residential real estate appraiser who supervises any unlicensed person acting as a real estate appraiser or an appraiser trainee as specified in this chapter.

"Transaction value" means the monetary amount of a transaction which may require the services of a certified or

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licensed appraiser for completion. The transaction value is not always equal to the market value of the real property interest involved. For loans or other extensions of credit, the transaction value equals the amount of the loan or other extensions of credit. For sales, leases, purchases and investments in or exchanges of real property, the transaction value is the market value of the real property interest involved. For the pooling of loans or interests in real property for resale or purchase, the transaction value is the amount of the loan or the market value of real property calculated with respect to each such loan or interest in real property.

"Uniform Standards of Professional Appraisal Practice" means those standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for use by all appraisers in the preparation of appraisal reports.

"Valuation" means an estimate or opinion of the value of real property.

"Valuation assignment" means an engagement for which an appraiser is employed or retained to give an analysis, opinion or conclusion that results in an estimate or opinion of the value of an identified parcel of real property as of a specified date.

"Waiver" means the voluntary, intentional relinquishment of a known right.

## Part II Entry

### **18VAC130-20-30. General qualifications for licensure.**

Every applicant to the Real Estate Appraiser Board for a certified general, certified residential, or licensed residential real estate appraiser license shall meet the following qualifications:

1. The applicant shall be of good moral character, honest, truthful, and competent to transact the business of a licensed real estate appraiser in such a manner as to safeguard the interests of the public.
2. The applicant shall meet the current educational and experience requirements and submit a license application to the Department of Professional and Occupational Regulation or its agent prior to the time the applicant is approved to take the licensing examination. Applications received by the department or its agent must be complete within 12 months of the date of the receipt of the license application and fee by the Department of Professional and Occupational Regulation or its agent.
3. The applicant shall sign, as part of the application, a statement verifying that the applicant has read and understands the Virginia real estate appraiser license law and the regulations of the Real Estate Appraiser Board.

4. The applicant shall be in good standing as a real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

5. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree, or case decision, by a court with the lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such conviction.

6. The applicant shall be at least 18 years old.

7. The applicant shall have successfully completed ~~90~~ 150 hours for the licensed residential classification, ~~120~~ 200 hours for the certified residential classification, and ~~180~~ 300 hours for the certified general classification, of approved real estate appraisal courses, including ~~a course of at least 15 hours on the~~ the 15-hour National Uniform Standards of Professional Appraisal Practice course, from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The required core curriculum for the certified residential real estate appraiser is an associate degree or higher. In lieu of the required degree, 21 semester credit hours covering the following subject matter courses: English Composition; Principles of Economics (Micro or Macro); Finance; Algebra; Geometry or higher mathematics; Statistics; Introduction to Computers – Word Processing/Spreadsheets; and Business or Real Estate Law. The required core curriculum for the certified general real estate appraiser is a bachelor's degree or higher. In lieu of the required degree, 30 semester credit hours covering the following subject matter courses: English Composition; Micro Economics; Macro Economics; Finance; Algebra; Geometry or higher mathematics; Statistics; Introduction to Computers – Word Processing/Spreadsheets; Business or Real Estate Law; and two elective courses in accounting; geography; ag-economics; business management; or real estate. The classroom hours required for the licensed residential real estate appraiser may include the classroom hours required for the appraiser trainee. The classroom hours required for the certified residential real estate appraiser may include the classroom hours required for the appraiser trainee or the licensed real estate appraiser ~~and may also include 30 hours of related courses in topics specified in 18VAC130-20-220 A-1.~~ The classroom hours

required for the certified general real estate appraiser may include the classroom hours required for the appraiser trainee, the licensed residential real estate appraiser, or the certified residential real estate appraiser ~~and may also include 30 hours of related courses in topics specified in 18VAC130-20-220 A-1.~~

All applicants for licensure as a certified general real estate appraiser must complete an advanced level appraisal course of at least 30 classroom hours in the appraisal of nonresidential properties.

8. The applicant shall, as part of the application for licensure, verify his experience in the field of real estate appraisal. All applicants must submit, upon application, sample appraisal reports as specified by the board. In addition, all experience must be supported by adequate written reports or file memoranda which shall be made available to the board upon request.

a. Applicants for a licensed residential real estate appraiser license shall have a minimum of 2,000 hours appraisal experience, in no fewer than 12 months. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience.

b. Applicants for a certified residential real estate appraiser license shall have a minimum of 2,500 hours of appraisal experience obtained during no fewer than 24 months. Hours may be treated as cumulative in order to achieve the necessary 2,500 hours of appraisal experience.

c. Applicants for a certified general real estate appraiser license shall have a minimum of 3,000 hours of appraisal experience obtained during no fewer than 30 months. Hours may be treated as cumulative in order to achieve the necessary 3,000 hours of appraisal experience. At least 50% of the appraisal experience required (1,500 hours) must be in nonresidential appraisal assignments and include assignments which demonstrate the use and understanding of the income approach. An applicant whose nonresidential appraisal experience is predominately in such properties which do not require the use of the income approach may satisfy this requirement by performing two or more appraisals on properties in association with a certified general appraiser which include the use of the income approach.

9. Within 12 months after being approved by the board to take the examination, the applicant shall have registered for and passed a written examination developed or endorsed by the Appraiser Qualifications Board and provided by the board or by a testing service acting on behalf of the board. Successful completion of the examination is valid for a period of 24 months.

10. Applicants for licensure who do not meet the requirements set forth in subdivisions 4 and 5 of this section may be approved for licensure following consideration of their application by the board.

## **18VAC130-20-60. Qualifications for licensure as an appraiser trainee.**

An applicant for licensure as an appraiser trainee shall meet the following educational, experience, and examination requirements in addition to those set forth in subdivisions 1 through 5 and 9 of 18VAC130-20-30 ~~through 5 and~~.

1. Within 12 months after being approved by the board to take the examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board. Successful completion of the examination is valid for a period of 24 months.

2. Within the five-year period immediately preceding application for licensure, the applicant shall have successfully completed 75 hours of approved real estate appraisal courses from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The classroom hours shall include ~~15 hours relative to the~~ 15-hour National Uniform Standards of Professional Appraisal Practice course.

3. There is no experience requirement for the appraiser trainee classification.

4. Responsibilities of supervising appraisers are described in this subdivision.

a. The appraiser trainee shall be subject to direct supervision by a supervising appraiser who shall be state ~~licensed or~~ certified in good standing.

b. The supervising appraiser shall be responsible for the training and direct supervision of the appraiser trainee by:

(1) Accepting responsibility for the appraisal report by signing and certifying the report is in compliance with the Uniform Standards of Professional Appraisal Practice;

(2) Reviewing the appraiser trainee appraisal report(s); and

(3) Personally inspecting each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of the Uniform Standards of Professional Appraisal Practice for the property type.

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c. The appraiser trainee is permitted to have more than one supervising appraiser, but a supervising appraiser may not supervise more than three trainees, at one time, unless a state program in the licensing jurisdiction provides for progress monitoring, supervising certified appraiser qualifications, and supervision and oversight requirements for supervising appraisers.

## **18VAC130-20-110. Qualifications for renewal.**

A. As a condition of renewal, and under §54.1-2014 of the Code of Virginia, all active certified general real estate appraisers, certified residential real estate appraisers, and licensed residential real estate appraisers, resident or nonresident, shall be required to complete continuing education courses satisfactorily within each licensing term as follows:

1. All real estate appraisers must satisfactorily complete continuing education courses or seminars offered by accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations of not less than 28 classroom hours during each licensing term.

2. All real estate appraisers may also satisfy up to one half of an individual's continuing education requirements by participation other than as a student in educational processes and programs approved by the board to be substantially equivalent for continuing education purposes, including but not limited to teaching, program development, or authorship of textbooks.

3. Seven of the classroom hours completed to satisfy the continuing education requirements shall be the National Uniform Standards of Professional Appraisal Practice update course or its equivalent.

B. As a condition of renewal, all licensed real estate appraiser trainees shall meet the continuing education requirements set forth in subsection A of this section beginning with the second licensing term. Continuing education is not required to renew a real estate appraiser trainee license at the expiration of the first licensing term.

C. All applicants for renewal of a license shall meet the standards for entry as set forth in subdivisions 1, 3 and 4 of 18VAC130-20-30.

D. Applicants for the renewal of a registration shall meet the requirement for registration as set forth in 18VAC130-20-20.

E. Applicants for the renewal of a certificate as an instructor shall meet the standards for entry as set forth in 18VAC130-20-80.

F. Licensees applying to activate an inactive license must ~~have met the continuing education requirements set forth in~~

~~this section within two years~~ complete all required continuing education hours that would have been required if the licensee was active prior to application to activate the license.

## **18VAC130-20-170. Standards of ethical conduct.**

In obtaining a real estate appraiser license and performing a real estate appraisal, a licensee shall comply with each provision of the Uniform Standards of Professional Appraisal Practice Ethics Rule and the following standards of ethical conduct:

1. All applicants for licensure shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instruction communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board or a testing service acting on behalf of the board with regard to conduct at the examination shall be grounds for denial of a license.

2. A licensee, certificate holder or registrant shall not obtain or attempt to obtain a license, certification or registration by false or fraudulent representation.

3. A licensee, registrant or certificate holder shall not make any misrepresentation.

## **18VAC130-20-180. Standards of professional practice.**

A. The provisions of subsections C through J of this section shall not apply to local, state and federal employees performing in their official capacity.

B. Maintenance of licenses. The board shall not be responsible for the failure of a licensee, registrant, or certificate holder to receive notices, communications and correspondence.

1. Change of address.

a. All licensed real estate appraisers, appraiser trainees, and certified instructors shall at all times keep the board informed in writing of their current home address and shall report any change of address to the board within 30 days of such change.

b. Registered real estate appraisal business entities shall at all times keep the board informed in writing of their current business address and shall report any change of address to the board within 30 days of such change.

2. Change of name.

a. All real estate appraisers, appraiser trainees, and certified instructors shall promptly notify the board in writing and provide appropriate written legal verification of any change of name.

b. Registered real estate appraisal business entities shall promptly notify the board of any change of name or

change of business structure in writing. In addition to written notification, corporations shall provide a copy of the Certificate of Amendment from the State Corporation Commission, partnerships shall provide a copy of a certified Partnership Certificate, and other business entities trading under a fictitious name shall provide a copy of the certificate filed with the clerk of the court where business is to be conducted.

3. Upon the change of name or address of the registered agent, associate, or partner, or sole proprietor designated by a real estate appraisal business entity, the business entity shall notify the board in writing of the change within 30 days of such event.
4. No license, certification or registration issued by the board shall be assigned or otherwise transferred.
5. All licensees, certificate holders and registrants shall operate under the name in which the license or registration is issued.
6. All certificates of licensure, registration or certification in any form are the property of the Real Estate Appraiser Board. Upon death of a licensee, dissolution or restructure of a registered business entity, or change of a licensee's, registrant's, or certificate holder's name or address, such licenses, registrations, or certificates must be returned with proper instructions and supplemental material to the board within 30 days of such event.
7. All appraiser licenses issued by the board shall be visibly displayed.

C. Use of signature and electronic transmission of report.

1. The signing of an appraisal report or the transmittal of a report electronically ~~in accordance with the Appraisal Standards Board Statement on Appraisal Standards No. 8, 1998 Edition~~, shall indicate that the licensee has exercised complete direction and control over the appraisal. Therefore, no licensee shall sign or electronically transmit an appraisal which has been prepared by an unlicensed person unless such work was performed under the direction and supervision of the licensee in accordance with §54.1-2011 C of the Code of Virginia.
2. All original appraisal reports shall be signed by the licensed appraiser. For narrative and letter appraisals, the signature and final value conclusion shall appear on the letter of transmittal and certification page. For form appraisals, the signature shall appear on the page designated for the appraiser's signature and final estimate of value. All temporary licensed real estate appraisers shall sign and affix their temporary license to the appraisal report or letter for which they obtained the license to authenticate such report or letter. Appraisal reports may be transmitted electronically ~~in accordance with Appraisal Standards Board Statement on Appraisal Standards No. 8.~~

Reports prepared without the use of a seal shall contain the license number of the appraiser.

- a. An appraiser may provide market analysis studies or consulting reports, which do not constitute appraisals of market value provided such reports, studies or evaluations shall contain a conspicuous statement that such reports, studies or valuations are not an appraisal as defined in §54.1-2009 of the Code of Virginia.
- b. Application of the seal and signature or electronic transmission of the report indicates acceptance of responsibility for work shown thereon.
- c. The seal shall conform in detail and size to the design illustrated below:



\*The number on the seal shall be the 10-digit number or the last 6 digits, or the last significant digits on the license issued by the board.

D. Development of appraisal. In developing a real property appraisal, all licensees shall comply with the provisions of the Uniform Standards of Professional Appraisal Practice (USPAP) in the edition in effect at the time of the reports' preparation. If the required definition of value uses the word "market," licensees must use the definition of market value set forth in USPAP "DEFINITIONS."

E. Appraisal report requirements. In reporting a real property appraisal, a licensee shall meet the requirements of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

F. Reviewing an appraisal. In performing a review appraisal, a licensee shall comply with the requirements of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation. The reviewer's signature and seal shall appear on the certification page of the report.

G. Mass appraisals. In developing and reporting a mass appraisal for ad valorem tax purposes, a licensee shall comply with the requirements of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

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## H. Recordkeeping requirements.

1. A licensee or registrant of the Real Estate Appraiser Board shall, upon request or demand, promptly produce to the board or any of its agents any document, book, or record in a licensee's possession concerning any appraisal which the licensee performed, or for which the licensee is required to maintain records for inspection and copying by the board or its agents. These records shall be made available at the licensee's place of business during regular business hours.

2. Upon the completion of an assignment, a licensee or registrant shall return to the rightful owner, upon demand, any document or instrument which the licensee possesses.

3. The appraiser trainee shall be entitled to obtain copies of appraisal reports he prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five years or at least two years after final disposition of any judicial proceedings in which testimony was given, whichever period expires last.

I. Disclosure requirements. A licensee appraising property in which he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, has any interest shall disclose, in writing, to any client such interest in the property and his status as a real estate appraiser licensed in the Commonwealth of Virginia. As used in the context of this chapter, "any interest" includes but is not limited to an ownership interest in the property to be appraised or in an adjacent property or involvement in the transaction, such as deciding whether to extend credit to be secured by such property.

J. Competency. A licensee shall abide by the Competency ~~Provision~~ Rule as stated in the ~~Ethics Provision~~ of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

## K. Unworthiness.

1. A licensee shall act as a certified general real estate appraiser, certified residential real estate appraiser or licensed residential real estate appraiser in such a manner as to safeguard the interests of the public, and shall not engage in improper, fraudulent, or dishonest conduct.

2. A licensee may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or of any felony there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. A certified copy of a final order, decree, or case decision by a court with the lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such guilt.

3. A licensee shall inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication, of any felony or of a misdemeanor involving moral turpitude.

4. A licensee may not have had a license or certification as a real estate appraiser which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction.

5. A licensee shall inform the board in writing within 30 days of the suspension, revocation or surrender of an appraiser license or certification in connection with a disciplinary action in any other jurisdiction, and a licensee shall inform the board in writing within 30 days of any appraiser license or certification which has been the subject of discipline in any jurisdiction.

6. A licensee shall perform all appraisals in accordance with Virginia Fair Housing Law, §36-96.1 et seq. of the Code of Virginia.

## **18VAC130-20-210. Standards for the approval of appraisal educational offerings for prelicensure credit.**

### A. Content.

1. Prior to licensure, applicants shall have successfully completed the 15 hour National Uniform Standards of Professional Appraisal Practice course or its equivalent.

2. While various appraisal courses may be credited toward the classroom requirement specified for each classification of licensure, all applicants for licensure as an appraiser trainee, a licensed residential, certified residential, or certified general real estate appraiser must demonstrate that their course work included coverage of ~~all~~ the required topics listed below.

~~Appraisal standards and ethics~~

~~Influences on real estate value~~

~~Legal considerations in appraisal~~

~~Types of value~~

~~Land economic principles~~

~~Real estate markets and analysis~~

~~Valuation process~~

~~Property description and analysis~~

~~Highest and best use analysis~~

~~Appraisal statistical concepts~~

~~Sales comparison approach~~

~~Site valuation~~

~~Cost approach~~

~~Income approach~~

## Valuation of partial interests

In addition, all applicants for certified residential or certified general real estate appraiser must demonstrate that their course work included coverage in narrative report writing.

Basic appraisal principles (30 hours)

Basic appraisal procedures (30 hours)

Residential market analysis and highest and best use (15 hours)

Residential appraiser site valuation and cost approach (15 hours)

Residential sales comparison and income approaches (30 hours)

Residential report writing and case studies (15 hours)

Statistics, modeling and finance (15 hours)

Advanced residential applications and case studies (15 hours)

General appraiser market analysis and highest and best use (30 hours)

General appraiser sales comparison approach (30 hours)

General appraiser site valuation and cost approach (30 hours)

General appraiser income approach (60 hours)

General appraiser report writing and case studies (30 hours)

3. All appraisal and appraisal-related offerings presented for prelicense credit must have a final, written examination. The examination may not be an open book examination.

4. Credit toward the classroom hour requirement to satisfy the educational requirement prior to licensure shall be granted only where the length of the educational offering is at least 15 classroom hours.

B. Instruction. With the exception of courses taught at accredited colleges, universities, junior and community colleges, or adult distributive or marketing education programs, all other prelicense educational offerings given after January 1, 1993, must be taught by instructors certified by the board. All courses in the Uniform Standards of Professional Appraisal Practice must be instructed by an Appraisal Qualifications Board certified instructor.

### **18VAC130-20-220. Standards for the approval of appraisal educational offerings for continuing education credit.**

A. Content.

1. The content of courses, seminars, workshops or conferences which may be accepted for continuing education credit includes, but is not limited to those topics listed in 18VAC130-20-210 A 2 and below.

Ad valorem taxation

~~Arbitrations~~ Arbitration, dispute resolution

Courses related to the practice of real estate appraisal or consulting

Development cost estimating

Ethics and standards of professional practice, Uniform Standards of Professional Appraisal Practice

Fair housing

Land use planning, zoning, ~~and taxation~~

Management, leasing, ~~brokerage~~, timesharing

Property development, partial interests

~~Real estate appraisal~~ (valuations/evaluations)

Real estate financing and investment

Real estate law, easements, and legal interests

Real estate litigation, damages, condemnation

Real estate appraisal related computer applications

Real estate securities and syndication

~~Real property exchange~~

2. Courses, seminars, workshops or conferences submitted for continuing education credit must indicate that the licensee participated in an educational program that maintained and increased his knowledge, skill and competency in real estate appraisal.

3. Credit toward the classroom hour requirement to satisfy the continuing education requirements shall be granted only where the length of the educational offering is at least two hours and the licensee participated in the full length of the program.

B. Instruction. Although continuing education offerings are not required to be taught by board certified instructors, effective January 1, 2003, the Uniform Standards of Professional Appraisal Practice course must be taught by an instructor certified by the Appraiser Qualifications Board.

### **18VAC130-20-230. Procedures for awarding prelicense and continuing education credits.**

A. Course credits shall be awarded only once for courses having substantially equivalent content.

B. Proof of completion of such course, seminar, workshop or conference may be in the form of a transcript, certificate,

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letter of completion or in any such written form as may be required by the board. All courses, seminars and workshops submitted for prelicensure and continuing education credit must indicate the number of classroom hours.

C. Information which may be requested by the board in order to further evaluate course content includes, but is not limited to, course descriptions, syllabi or textbook references.

D. All transcripts, certificates, letters of completion or similar documents submitted to verify completion of seminars, workshops or conferences for continuing education credit must indicate successful completion of the course, seminar, workshop or conference. Applicants must furnish written proof of having received a passing grade in all prelicense education courses submitted.

E. Credit may be awarded for prelicensure courses completed by challenge examination without classroom attendance, if such credit was granted by the course provider prior to July 1, 1990, and provided that the board is satisfied with the quality of the challenge examination that was administered by the course provider.

F. All courses seminars, workshops, or conferences, submitted for satisfaction of continuing education requirements must be satisfactory to the board.

G. Prelicense courses. A distance education course may be acceptable to meet the classroom hour requirement or its equivalent provided that the course is approved by the board, the learner successfully completes a written examination proctored by an official approved by the presenting entity, college or university, the course meets the requirements for qualifying education established by the Appraiser Qualifications Board, the course is equivalent to the minimum of 15 classroom hours and meets one of the following conditions:

1. The course is presented by an accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines; or

~~2. The course has received the American Council on Education's Program on Noncollegiate Sponsored Instruction (ACE/Credit Program) approval for college credit; or~~

~~3. 2.~~ The course has received approval of the International Distance Education Certification Center (IDECC) for the course design and delivery mechanism and either the approval of the Appraisal Qualifications Board through its course approval program or the approval of the board for the content of the course.

H. Continuing education. Distance education courses may be acceptable to meet the continuing education requirement provided that the course is approved by the board, is a minimum of two classroom hours, meets the requirements for

continuing education established by the Appraiser Qualifications Board and meets one of the following conditions:

1. The course is presented to an organized group in an instructional setting with a person qualified and available to answer questions, provide information, and monitor student attendance;

2. The course has been presented by an accredited (Commission on Colleges or regional accreditation association) college or university that offers distance education programs in other disciplines and the student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation that demonstrate mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable); or

~~3. The course has received approval for college credit by the American Council on Education through its (ACE/Credit Program) and the student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation that demonstrate mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable); or~~

4. ~~3.~~ The course has received approval of the International Distance Education Certification Center (IDECC) for the course design and delivery mechanism and either the approval of the Appraiser Qualifications Board through its course approval program or the approval of the board for the content of the course and the student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation that demonstrate mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable).

I. A teacher of appraisal courses may receive education credit for the classroom hour or hours taught. These credits shall be awarded only once for courses having substantially equivalent content.

**NOTICE:** The forms used in administering the 18VAC130-20 are not being published; however, the name of each form is

listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Real Estate Appraiser Board License Application, 40LIC (rev. ~~9/02~~ 8/07).

Real Estate Appraiser Board Experience Log, 40EXP (rev. ~~9/02~~ 8/07).

Real Estate Appraiser Board Experience Affidavit Verification Form, 40EXPAFFEXPVER (eff. ~~9/02~~ 9/02 rev. 8/07).

Experience Requirements, 40EXPREQ (eff. ~~9/02~~ 8/07).

Real Estate Appraiser Board Trainee License Application, 40TRLIC (rev. ~~9/02~~ 8/07).

Real Estate Appraiser Board Trainee Supervisor Verification Form, 40TRSUP (eff. ~~9/02~~ rev. 8/07).

Real Estate Appraiser Business Registration Application, 40BUS (eff. ~~9/02~~ rev. 8/07).

Real Estate Appraiser Board New Course Application, 40CRS (eff. ~~9/02~~ rev. 8/07).

Real Estate Appraiser Board Instructor Certificate Application, 40INSTR (eff. ~~9/02~~ rev. 8/07).

Real Estate Appraiser Board Renewal Course Application, 40RENCRS (rev. 8/07).

Real Estate Appraiser Board Activate Application, 40ACT (rev. 8/07).

Real Estate Appraiser Board Temporary License Application, 40LIC (rev. 8/07).

DOCUMENTS INCORPORATED BY REFERENCE

~~Transfer Credit Practices of Designated Educational Institutions, American Association of Collegiate Registrars and Admissions Officers.~~

Uniform Standards of Professional Appraisal Practice, ~~2003~~ 2008-2009 Edition, Appraisal Standards Board, Appraisal Foundation.

~~Statement on Appraisal Standards No. 8 (SMT 8), Electronic Transmission of Reports, 1998 Edition, Appraisal Standards Board, Appraisal Foundation.~~

VA.R. Doc. No. R08-1054; Filed November 7, 2007, 11:53 a.m.



**TITLE 22. SOCIAL SERVICES**

**BOARDS OF EDUCATION; JUVENILE JUSTICE; MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICE**

**Final Regulation**

Titles of Regulations: **22VAC42-10. Standards for Interdepartmental Regulation of Children's Residential Facilities (repealing 22VAC42-10-10 through 22VAC42-10-1000).**

**22VAC42-11. Standards for Interdepartmental Regulation of Children's Residential Facilities (adding 22VAC42-11-10 through 22VAC42-11-1080).**

Statutory Authority: §§16.1-309.9, 22.1-321, 22.1-323, 22.1-323.2, 37.2-407, 37.2-408, 63.2-217, 63.2-1701, 63.2-1703, 63.2-1737, 63.2-203, 66-10 and 66-24 of the Code of Virginia.

Effective Date: December 28, 2007.

Agency Contact: Charlene Vincent, Coordinator, Department of Social Services, Office of Interdepartmental Regulation, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7097, FAX (804) 726-7095, TTY (800) 828-1120, or email charlene.vincent@dss.virginia.gov.

Summary:

*This joint action repeals 22VAC42-10 and adopts a new regulation, 22VAC42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities. The regulation applies to all children's residential facilities licensed or certified by the Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services. The changes made to this regulation reflect changes to the children's residential facility industry in recent years, and in federal requirements regarding recordkeeping and behavior management. The changes also incorporate the requirements found in Chapters 168 and 781 of the 2006 Acts of Assembly. Substantive changes address changes in the types of licenses issued in response to compliance issues, summary suspensions, staff training requirements and qualifications, timely educational services, recordkeeping requirements, medication, staff supervision ratios, behavior management, recreation, emergency procedures, and community relations.*

*The majority of changes made to the proposed regulation is nonsubstantive and merely clarify, correct or improve language.*

*Substantive changes include clarifying in 22VAC42-11-70 that providers must be in substantial compliance of the regulations. The amount of time a provider has to self*

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report lawsuits was changed from 72 hours to 10 days in the same standard. In 22VAC42-11-90 unnecessary language was deleted from the provisional license section and the number of systemic deficiencies required before a facility can be given a provisional license was changed from one back to the original requirement of two. In 22VAC42-11-180 the requirement that the decision making plan be approved by the regulatory agency was deleted. Any change in program director was added to the list of changes needing to be reported to the regulatory agency in 22VAC42-11-230. In 22VAC42-11-250 "or residency at the facility" was added so that individuals other than staff or residents who live at the facility would also be required to have a TB assessment. In 22VAC42-11-270 "after the effective date of these standards" was added to ensure that all current staff would not be affected by new qualification requirements. Training in the appropriate sitting of children's residential facilities was added as a requirement in 22VAC42-11-310. The requirement that an applicant must show documentation regarding good neighbor policies and community relations was added in 22VAC42-11-330.

Sections regarding qualification requirements were made more flexible by only requiring a certain number of years professional experience combined instead of requiring a certain number of years experience in each type of experience. A degree in administration was also added in 22VAC42-11-340 as an acceptable degree for a chief administrative officer. An experienced child care worker was added as an acceptable person to work with an inexperienced child care worker in 22VAC42-11-380.

In standards where the legal guardian was listed, parents were added, if appropriate.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

## CHAPTER 11

### STANDARDS FOR INTERDEPARTMENTAL REGULATION OF CHILDREN'S RESIDENTIAL FACILITIES

#### **22VAC42-11-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Allegation" means an accusation that a facility is operating without a license or receiving public funds for services it is not certified to provide.

"Annual" means within [ ~~12~~ 13 ] months of the previous event or occurrence.

"Applicable state regulation" means any regulation that the promulgating state agency determines applies to the facility. The term includes, but is not necessarily limited to, modules, standards, and other regulations promulgated by the Departments of Education; Health; Housing and Community Development; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; or other state agencies.

"Applicant" means the person, corporation, partnership, association, or public agency that has applied for a license or certificate.

[ "Application" means a document completed by the facility to furnish the regulatory authority details about the facility's operations and includes certifications that the facility understands and intends to comply with regulatory requirements. An application includes inspection reports necessary to verify compliance with applicable requirements of other state agencies. An application is complete when all required information is provided and the application is signed and dated by the individual legally responsible for operation of the facility. ]

"Aversive stimuli" means physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity that when applied to [ ~~an individual~~ a resident ], are noxious or painful to the individual, but in no case shall the term "aversive stimuli" include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the [ ~~individual~~ resident ] .

"Behavior support" means those principles and methods employed by a provider to help a child achieve positive behavior and to address and correct a child's inappropriate behavior in a constructive and safe manner in accordance with written policies and procedures governing program expectations, treatment goals, child and staff safety and security, and the child's service plan.

"Behavior support assessment" means identification of a resident's behavior triggers, successful intervention strategies, anger and anxiety management options for calming, techniques for self-management, and specific goals that address the targeted behaviors that lead to emergency safety interventions.

"Body cavity search" means any examination of a resident's rectal or vaginal cavities, except the performance of medical procedures by medical personnel.

"Case record" or "record" means up-to-date written or automated information relating to one resident. This information includes social data, agreements, all correspondence relating to care of the resident, service plans with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident.

"Child" means any person legally defined as a child under state law. The term includes residents and other children coming in contact with the resident or facility (e.g., visitors). When the term is used, the requirement applies to every child at the facility regardless of whether the child has been admitted to the facility for care (e.g., staff/child ratios apply to all children present even though some may not be residents).

"Child-placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of [ ~~public welfare or~~ ] social services authorized to place children in foster homes or adoptive homes.

[ "~~Child with a visual impairment" means one whose vision after best correction limits the child's ability to profit from a normal or unmodified educational or daily living setting.~~

~~"Child with special needs" means a child in need of particular services because the child has mental retardation, a developmental disability, mental illness, emotional disturbance, a substance abuse problem, is in need of special educational services, or requires security services. ]~~

"Children's residential facility" or "facility" means a publicly or privately operated facility, other than a private family home, where 24-hour per day care is provided to children separated from their legal guardians and is required to be licensed or certified by the Code of Virginia except:

1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and that receives no public funds; and
2. Acute-care private psychiatric hospitals serving children that are licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services under Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver, and Residential Brain Injury Services, 12VAC35-105.

"Complaint" means an accusation against a licensed or certified facility regarding an alleged violation of standards or law.

[ "~~Corrective action plan" means violations documented by the regulatory authority and the facility's corrective action to the documented violations within a specified time frame. ]~~

"Confined in postdispositional detention" means that a court has sentenced the juvenile to a detention home for a period exceeding 30 days as found in §16.1-284.1 B of the Code of Virginia.

"Contraband" means any item prohibited by law or by the rules and regulations of the agency, or any item that conflicts with the program or safety and security of the facility or individual residents.

"Corporal punishment" means punishment administered through the intentional inflicting of pain or discomfort to the body through actions such as, but not limited to (i) striking or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort.

[ "~~Corrective action plan" means violations documented by the regulatory authority and the facility's submitted pledged corrective action to the documented violations cited by the regulatory authority. ]~~

"Day" means calendar day unless the context clearly indicates otherwise.

"Detention home" or "secure detention" means a local, regional or state, publicly or privately operated secure custody facility that houses juveniles who are ordered detained pursuant to the Code of Virginia. The term does not include juvenile correctional centers.

"DJJ" means the Department of Juvenile Justice.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DOE" means the Department of Education.

"DSS" means the Department of Social Services.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Emergency does not include regularly scheduled time off for permanent staff or other situations that should reasonably be anticipated.

"Emergency admission" means the sudden, unplanned, unexpected admittance of a child who needs immediate care except self-admittance to a temporary care facility or a court-ordered placement.

"Goal" means expected results or conditions that usually involve a long period of time and that are written in behavioral terms in a statement of relatively broad scope. Goals provide guidance in establishing specific short-term objectives directed toward the attainment of the goal.

"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual maintains business or professional, family and community relationships that are characterized by honesty, fairness, truthfulness, and dependability, and has a history or pattern of behavior that demonstrates that the individual is suitable and able to care for, supervise, and protect children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Group home" means a children's residential facility that is a community-based, home-like single dwelling, or its

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acceptable equivalent, other than the private home of the operator, and serves up to 12 residents.

"Health record" means the file maintained by a provider that [ ~~houses contains~~ ] personal health information.

"Human research" means any systematic investigation [ ~~utilizing human subjects that may expose such human subjects to physical or psychological injury as a consequence of participation as subjects and that departs from the application of established and accepted therapeutic methods appropriate to meet the subjects' needs.~~ including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR 46.101(b). ]

"Immediately" means directly without delay.

"Independent living program" means a competency-based program that is specifically approved [ by the regulatory authority ] to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.

"Individualized service plan" means a written plan of action developed, and modified at intervals, to meet the needs of a specific resident. It specifies measurable short and long-term goals, objectives, strategies and time frames for reaching the goals and the individuals responsible for carrying out [ ~~a~~ the ] plan.

"Interdepartmental standards" means the standards for residential care that are common to the departments and that must be met by a children's residential facility in order to qualify for a license or certificate.

"Juvenile correctional center" means a secure custody facility operated by, or under contract with, the Department of Juvenile Justice to house and treat persons committed to the department.

"Legal guardian" means the natural or adoptive parents or other person, agency, or institution that has legal custody of a child.

"License or certificate" means a document verifying approval to operate a children's residential facility and that indicates the status of the facility regarding compliance with applicable state regulations.

"Live-in staff" means staff who are required to be on duty for a period of 24 consecutive hours or more during each work week.

"Living unit" means the space in which a particular group of children in care of a residential facility reside. A living unit contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents of the unit.

Depending upon its design, a building may contain one living unit or several separate living units.

"Mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of a person's body as a means to control his physical activities when the individual receiving services does not have the ability to remove the device.

"Medication error" means [ ~~that~~ ] an error [ ~~has been~~ ] made in administering a medication to a resident [ ~~when any of the following occur~~ including the following ] : (i) the wrong medication is given to a resident; (ii) the wrong resident is given the medication; (iii) the wrong dosage is given to a resident; (iv) medication is given to a resident at the wrong time or not at all; and (v) the proper method is not used to give the medication to a resident. A medication error does not include a resident's refusal of offered medication.

"Objective" means expected short-term results or conditions that must be met in order to attain a goal. Objectives are stated in measurable, behavioral terms and have a specified time for achievement.

"On duty" means that period of time during which a staff person is responsible for the supervision of one or more children.

"Parent" means a natural or adoptive parent or a surrogate parent appointed pursuant to DOE's regulations governing special education programs for students with disabilities. "Parent" means either parent unless the facility has been provided [ ~~evidence~~ documentation ] that there is a legally binding instrument, a state law or a court order governing such matters as divorce, separation, or custody, that provides to the contrary.

"Pat down" means a thorough external body search of a clothed resident.

"Personal health information" means the information that encompasses the universe of oral, written or otherwise recorded information that is created or received by an entity [ ~~and~~ ] relating to either an individual's physical or mental health or the provision of or payment for health care to an individual.

"Pharmacological restraint" means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when [ ~~the administered medication is not a standard treatment for the individual's medical or psychiatric condition when that individual's behavior places him or others at imminent risk.~~ the individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition. ]

"Physical restraint" (also referred to as a "manual hold") means use of a physical intervention or "hands-on" hold to

prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Placement" means an activity by any person that provides assistance to a parent or legal guardian in locating and effecting the movement of a child to a foster home, adoptive home, or children's residential facility.

"Premises" means the tracts of land on which any part of a residential facility for children is located and any buildings on such tracts of land.

"Provider" or "licensee" [ or "sponsor" ] means the person, corporation, partnership, association, or public agency to whom a license or certificate is issued and who is legally responsible for compliance with the [ standards regulatory ] and statutory requirements relating to the facility.

"Regulatory authority [ or agency ] " means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a children's residential facility.

"Resident" means a person admitted to a children's residential facility for supervision, care, training or treatment on a 24-hour per day basis.

"Respite care facility" means a facility that is specifically approved to provide short-term, periodic residential care to children accepted into its program in order to give the [ parents or ] legal guardians temporary relief from responsibility for their direct care.

"Rest day" means a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to the facility.

[ "Right" is something to which one has a legal or contractual claim. ]

"Routine admission" means the admittance of a child following evaluation of an application for admission and execution of a written placement agreement.

"Rules of conduct" means a listing of [ a facility's ] rules or regulations that is maintained to inform residents and others about behaviors that are not permitted and the consequences applied when the behaviors occur.

"Sanitizing agent" means any substance approved by the Environmental Protection Agency to destroy bacteria.

"Seclusion" means the involuntary placement of an individual alone, in an area secured by a door that is locked or held shut by a staff person [ ; ] by physically blocking the door [ ; ] or by any other physical or verbal means so that the individual cannot leave it.

"Secure custody facility" means a detention home or a juvenile correctional center [ with physical barriers that regulate movement ] .

"Self-admission" means the admittance of a child who seeks admission to a temporary care facility as permitted by Virginia statutory law without completing the requirements for "routine admission."

"Severe weather" means extreme environment or climate conditions that pose a threat to the health, safety, or welfare of residents.

[ "Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed. ]

"Standard" means a statement that describes in measurable terms a required minimum performance level. [ The term standard and the term regulation may be used interchangeably. ]

"Strategies" means a series of steps and methods used to meet goals and objectives.

"Strip search" means a visual inspection of the body of a resident when that resident's outer clothing or total clothing is removed and an inspection of the removed clothing. Strip searches are conducted for the detection of contraband.

"Structured program of care" means a comprehensive planned daily routine including appropriate supervision that meets the needs of each resident both individually and as a group.

"Student/intern" means an individual who simultaneously is affiliated with an educational institution and a residential facility. Every student/intern who is not an employee is either a volunteer or contractual service provider depending upon the relationship among the student/intern, educational institution, and facility.

[ "Substantial compliance" means that while there may be noncompliance with one or more standards that represents minimal risk, compliance clearly and obviously exists with most of the standards as a whole. ]

"Systemic deficiency" means violations documented by the regulatory authority that demonstrate defects in the overall operation of the facility or one or more of its components.

"Target population" means individuals with a similar, specified characteristic or disability.

"Temporary care facility" means a facility or an emergency shelter specifically approved to provide a range of services, as needed, on an individual basis not to exceed 90 days, except that this term does not include secure detention facilities.

"Temporary contract worker" means an individual who is not a direct salaried employee of the provider but is employed by a third party and is not a consistently scheduled staff member.

"Therapy" means provision of direct diagnostic, preventive and treatment services where functioning is threatened or

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affected by social and psychological stress or health impairment.

"Time out" means the involuntary removal of [ ~~an individual~~ a resident ] by a staff person from a source of reinforcement to a different open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services in those areas that show impairment as the result of mental disability, substance addiction, or physical impairment. In order to be considered sound and therapeutic, the treatment must conform to current acceptable professional practice.

"Variance" means temporary or permanent waiver of compliance with a standard or portion of a standard, or permission to meet the intent of the standard by a method other than that specified in the standard, when the regulatory authority, in its sole discretion, determines: (i) enforcement will create an undue hardship and (ii) resident care will not be adversely affected. [ ~~The denial of a request for a variance is appealable when it leads to the denial or revocation of a license or certificate.~~ ]

[ "Volunteers" means any individual or group who of their own free will, and without any financial gain, provides goods and services to the program without compensation. ]

"Wilderness program" means a facility specifically approved to provide a primitive camping program with a nonpunitive environment and an experience curriculum for residents nine years of age and older who cannot presently function in home, school, [ ~~and~~ or ] community. In lieu of or in addition to dormitories, cabins or barracks for housing residents, primitive campsites are used to integrate learning, mentoring, and group process with real living needs and problems for which the resident can develop a sense of social responsibility and self worth.

## **22VAC42-11-20. Interdepartmental cooperation.**

The Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services shall assist and cooperate with each other in the licensing and certification of children's residential facilities.

## **22VAC42-11-30. Applications.**

### A. Initial applications.

1. A completed application includes, but is not limited to, an initial application form; proposed working budget for the year showing projected revenue and expenses for the first year of operation and a balance sheet showing assets and liabilities; evidence of financial resources or a line of credit sufficient to cover estimated operating expenses for

90 days unless the facility is operated by a state or local government agency, board, or commission; a description of the program; a proposed staffing/supervision plan including the staff information sheet; copies of all job descriptions; evidence of the applicant's authority to conduct business in Virginia; a copy of the floor plan with dimensions of rooms; a certificate of occupancy; current health inspection; evidence of consultation with state or local fire prevention authorities; a list of board members, if applicable; three references for the applicant; and, if required by the regulatory authority, references for three officers of the board if applicable. This information [ ~~must~~ shall ] be submitted to and approved by the lead regulatory agency in order for the application to be considered complete.

2. All initial applications that are not complete within 12 months [ ~~will~~ shall ] be closed.

3. Facilities operated by state or local government agencies, boards, and commissions shall submit evidence of sufficient funds to operate including a working budget showing appropriated revenue and projected expenses for the coming year.

4. Currently licensed providers [ ~~must~~ shall ] demonstrate that they are operating in substantial compliance with applicable regulations before new facilities operated by the same provider will be licensed.

B. Renewal applications. A completed application for renewal of a facility's license or certificate shall be submitted within 30 days after being notified to submit a renewal application.

## **22VAC42-11-40. Investigation.**

The regulatory authority or regulatory authorities will arrange and conduct an on-site inspection of the facility and a thorough review of the services [ : ] and [ ~~investigate~~ an investigation of ] the character, reputation, status, and responsibility of the applicant.

## **22VAC42-11-50. Review of facilities.**

A. Representatives of the [ ~~departments~~ regulatory authorities ] shall make announced and unannounced reviews during the effective dates of the license/certificate. The purpose of these reviews is to monitor compliance with applicable standards.

B. The regulatory authority shall notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in children's residential facilities when such violations result in the lowering of the license or certificate to provisional status.

**22VAC42-11-60. Posting of information.**

A. Information concerning the application for initial licensure of children’s residential facilities shall be posted to the Interdepartmental Regulation website by locality.

B. An accurate listing of all licensed or certified facilities including information on renewal, denial, or provisional licensure, services and identification of the lead regulatory authority shall be posted ~~to~~ on the Interdepartmental Regulation website by locality.

**22VAC42-11-70. General requirements.**

A. The ~~facility provider~~ shall demonstrate ~~full~~ substantial compliance with ~~sufficient applicable~~ these standards to ~~clearly~~ demonstrate that its program and physical plant ~~provides~~ provide reasonably safe and adequate care while approved plans of action to correct findings of noncompliance are being implemented and there are no noncompliances that pose an immediate and direct danger to residents.

B. Corporations sponsoring residential facilities for children shall maintain their corporate status in accordance with Virginia law.

C. The ~~facility provider~~ shall comply with the terms of its license or certificate.

D. A license or certificate is not transferable and automatically expires when there is a change of ownership or sponsorship.

E. The current license or certificate shall be posted at all times in a place conspicuous to the public.

F. A license or certificate shall not be issued to a facility when noncompliance poses an immediate danger to the resident’s life, health, or safety.

G. Intermediate sanctions authorized by statute may be imposed at the discretion of the regulatory authorities.

H. Each ~~facility provider~~ shall self-report within ~~72 hours~~ 10 days, to the lead regulatory agency, lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges against staff that may have been made relating to the health and safety or human rights of residents.

I. The provider shall comply with all other applicable federal, state, or local laws and regulations.

J. The provider’s current policy and procedure manual shall be readily accessible to all staff.

K. The provider shall comply with ~~their~~ its own policies and procedures.

**22VAC42-11-80. Written corrective action plans.**

[ ~~A.~~ Facilities regulated by the department of Juvenile Justice shall comply with the Board of Juvenile Justice’s certification regulations governing corrective action plans. ]

[ ~~A. B.~~ If there is noncompliance with ~~any of these~~ applicable standards during an initial or ongoing review or investigation, the regulatory authority shall issue a licensing report describing the noncompliance and requesting the provider to submit a corrective action plan.

[ ~~B. C.~~ The provider shall submit to the regulatory authority and implement a written corrective action plan for each standard ~~found to be in noncompliance as identified on the licensing report.~~ for which the provider is found to be in noncompliance. ]

[ ~~C. D.~~ The ~~plan of corrective action~~ corrective action plan ] shall include a:

1. Description of each corrective action to be taken and person responsible for implementation;
2. Date of completion for each action; and
3. Signature of the person responsible for oversight of the implementation of the pledged corrective action.

[ ~~D. E.~~ The provider shall submit the corrective action plan to the regulatory authority within 15 business days of the issuance of the licensing report. Extensions may be granted by the regulatory authority when requested prior to the due date, but extensions shall not exceed an additional 10 business days. An immediate corrective action shall be required if the regulatory authority determines that the violations ~~are related~~ pose a threat ] to the health, safety or welfare of residents.

[ ~~E. F.~~ A corrective action plan shall be approved by the regulatory authority. The provider ~~has~~ shall have ] an additional 10 business days to submit a revised corrective action plan after receiving a notice that the plan submitted has not been approved.

**22VAC42-11-90. Licenses ~~and~~ certificates.**

A. The Board of Juvenile Justice shall issue a certificate to each facility regulated by the board indicating the facility’s certification status when the facility is in compliance with these interdepartmental standards, other applicable regulations issued by the board, and applicable statutes. The certificate shall be effective for the period specified by the board unless it is revoked or surrendered sooner.

B. Facilities regulated by DOE, DMHMRSAS, or DSS.

1. A conditional license shall be issued to a new provider that demonstrates compliance with administrative and policy requirements but has not demonstrated compliance with all [ of ] the Interdepartmental Standards. A

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conditional license shall not exceed six months unless allowed by the Code of Virginia.

2. A provisional license may be issued to a provider that has demonstrated an inability to maintain compliance with the Interdepartmental Standards or other applicable regulations; has violations of licensing standards that pose a threat to the health or safety of residents being served; ~~[ has multiple violations of licensing standards; or has failed to comply with a previous corrective action plan and~~ or ] ~~has [ one two ]~~ or more systemic deficiencies.

a. A provisional license may be issued at any time.

b. The term of a provisional license may not exceed six months unless allowed by the Code of Virginia.

3. An annual license or certificate:

a. Shall be issued when the provider applies for renewal while holding a conditional or provisional license or certificate and substantially meets or exceeds the requirements of the Interdepartmental Standards and other regulations and statutes.

b. May be issued at any time if the provider has received one systemic deficiency.

c. May be renewed, but an annual license or certificate and any renewals thereof shall not exceed a period of 36 successive months for all annual licenses and renewals combined.

4. A triennial license or certificate shall be issued when the provider:

a. Applies for renewal while holding an annual or triennial license or certificate; and

b. Substantially meets or exceeds the requirements of the Interdepartmental Standards and other applicable regulations and statutes.

C. The term of a facility's license or certificate may be modified at any time during the licensure or certification period based on a change in the facility's compliance with ~~[ this regulation~~ these standards and other applicable statutes and regulations ] .

## **22VAC42-11-100. Application fees.**

A. There shall be a \$500 nonrefundable initial application fee. If the application is closed, denied, or withdrawn all subsequent initial applications ~~[ will shall ]~~ require another \$500 fee.

B. There shall be a \$100 nonrefundable renewal application fee.

C. ~~[ No A ]~~ renewal fee ~~[ will shall not ]~~ be charged to providers directly following the issuance of a conditional license.

D. ~~[ This The ]~~ application fee ~~[ does shall ]~~ not apply to state or locally owned, operated, or contracted facilities.

E. ~~[ Such Application ]~~ fees ~~[ are to shall ]~~ be used for the development and delivery of training for providers and staff of children's residential facilities and regulators of these facilities.

## **22VAC42-11-110. Modification.**

A. The conditions of a license or certificate may be modified during the term of the license or certificate with respect to the capacity, residents' age range, facility location, gender, or changes in the services. Limited modifications may be approved during the conditional licensure or certification period.

B. The provider shall submit a written report of any contemplated changes in operation that would affect the terms of the license or certificate or the continuing eligibility for licensure or certification to the lead regulatory authority.

C. A change shall not be implemented prior to approval by the regulatory authority. ~~[ A determination will be made as to whether changes will be approved and the license or certificate modified accordingly or whether an application for a new license or certificate must be filed. ]~~ The provider will be notified in writing within 60 days following receipt of the request as to whether the modification is approved or a new license or certificate is required.

## **22VAC42-11-120. Denial.**

A. An application for licensure or certification may be denied when the applicant:

1. Violates any provision of applicable laws or regulations made pursuant to such laws;

2. Has a founded disposition of child abuse or neglect after the appeal process has been completed;

3. Has been convicted of a crime listed in §37.2-416 or 63.2-1726 of the Code of Virginia;

4. Has made false statements on the application or misrepresentation of facts in the application process;

5. Has not demonstrated good character and reputation as determined through references, background investigations, driving records, and other application materials; or

6. Has a history of adverse licensing actions or sanctions.

B. If denial of a license or certificate is recommended, the facility ~~[ will shall ]~~ be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process.

## **22VAC42-11-130. Revocation.**

A. ~~[ The A ]~~ license or certificate may be revoked when the provider:

1. Violates any provision of applicable laws or [ applicable ] regulations [ made pursuant to such laws ] ;

2. Engages in conduct or practices that are in violation of statutes related to abuse or neglect of children;

3. Deviates significantly from the program or services for which a license or certificate was issued without obtaining prior written approval from the regulatory authority or fails to correct such deviations within the specified time; or

4. Engages in a willful action or gross negligence that jeopardizes the care or protection of residents.

B. If revocation of a license or certificate is recommended, the facility [ will shall ] be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process.

**22VAC42-11-140. Summary suspension.**

A. In conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents, the lead regulatory authority agency head may issue an order of summary suspension of the license or certificate to operate a children’s residential facility when he believes the operation of the facility should be suspended during the pendency of such proceeding.

B. Prior to the issuance of an order of summary suspension, the regulatory authority shall contact the Executive Secretary of the Supreme Court of Virginia to obtain the name of a hearing officer. The lead regulatory authority shall schedule the time, date, and location of the administrative hearing with the hearing officer.

C. The order of summary suspension shall take effect upon its issuance. It shall be delivered by personal service and certified mail, return receipt requested, to the address of record of the facility as soon as practicable. The order shall set forth:

1. The time, date, and location of the hearing;
2. The procedures for the hearing;
3. The hearing and appeal rights; and
4. Facts and evidence that formed the basis for the order of summary suspension.

D. The hearing shall take place within three business days of the issuance of the order of summary suspension.

E. The regulatory authority shall have the burden of proving in any summary suspension hearing that it had reasonable grounds to require the facility to cease operations during the pendency of the concurrent revocation, denial, or other proceeding.

F. The administrative hearing officer shall provide written findings and conclusions, together with a recommendation as to whether the license or certificate should be summarily suspended, to the lead regulatory agency head within five business days of the hearing.

G. The lead regulatory agency head shall issue a final order of summary suspension or make a determination that the summary suspension is not warranted based on the facts presented and the recommendation of the hearing officer within seven business days of receiving the recommendation of the hearing officer.

H. The lead regulatory agency head shall issue and serve on the children’s residential facility or its designee by personal service or by certified mail, return receipt requested, either:

1. A final order of summary suspension including (i) the basis for accepting or rejecting the hearing officer’s recommendations and (ii) notice that the children’s residential facility may appeal the lead regulatory agency head’s decision to the appropriate circuit court no later than 10 days following issuance of the order; or

2. Notification that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded.

I. The facility may appeal the lead regulatory agency head’s decision on the summary suspension to the appropriate circuit court no more than 10 days after issuance of the final order.

J. The outcome of concurrent revocation, denial, and other proceedings shall not be affected by the outcome of any hearing pertaining to the appropriateness of the order of summary suspension.

K. At the time of the issuance of the order of summary suspension, the lead regulatory authority shall contact the appropriate agencies to inform them of the action and the need to develop relocation plans for residents, and ensure that parents and guardians are informed of the pending action.

**22VAC42-11-150. Variances.**

A. Any request for a variance shall be submitted in writing to the regulatory authority and [ should shall ] include a:

1. Justification why enforcement of the standard would create an undue hardship; [ and

2. How the facility can comply with the intent of the standard; and ]

[ 2- 3. ] Justification why resident care would not be adversely affected if the variance was granted.

B. A variance shall not be [ effected implemented ] prior to approval of the regulatory authority.

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## **22VAC42-11-160. Investigation of complaints and allegations.**

The Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse [ ~~Service Services~~ ] ; and Social Services are responsible for complete and prompt investigation of all complaints and allegations [ ~~at the facilities where made against providers for which~~ ] ~~they~~ have regulatory authority, and for notification of the appropriate persons or agencies when removal of residents may be necessary. Suspected criminal violations shall be reported to the appropriate law-enforcement authority.

## **22VAC42-11-170. Governing body.**

A. The provider shall clearly identify the corporation, association, partnership, individual, or public agency that is the licensee.

B. The provider shall clearly identify any governing board, body, entity or person to whom it delegates the legal responsibilities and duties of the provider.

## **22VAC42-11-180. Responsibilities of the provider.**

A. The provider shall appoint a qualified chief administrative officer to whom it delegates, in writing, the authority and responsibility for administrative direction of the facility.

B. The provider shall develop and implement a written decisionmaking plan that shall provide for a staff person with the qualifications of the chief administrative officer or program director to be designated to assume the temporary responsibility for the operation of the facility. Each plan [ ~~must be approved by the regulatory agency and shall~~ ] include an organizational chart.

C. The provider shall develop a written statement of the objectives of the facility including a description of the target population and the programs to be offered.

D. The provider shall develop and implement written policies and procedures to monitor and evaluate service quality and effectiveness on a systematic and on-going basis. The provider shall implement improvements when indicated.

## **22VAC42-11-190. Fiscal accountability.**

A. Facilities operated by corporations, unincorporated organizations or associations, individuals, or partnerships shall prepare at the end of each fiscal year:

1. An operating statement showing revenue and expenses for the fiscal year just ended;
2. A working budget showing projected revenue and expenses for the next fiscal year that gives evidence that there are sufficient funds to operate; and
3. A balance sheet showing assets and liabilities for the fiscal year just ended.

B. There shall be a system of financial recordkeeping that shows a separation of the facility's accounts from all other records.

C. The provider shall develop and implement written policies and procedures that address the day-to-day handling of facility funds to include:

1. Handling of deposits;
2. Writing of checks; and
3. Handling of petty cash.

## **22VAC42-11-200. Insurance.**

A. The [ ~~facility provider~~ ] shall maintain liability insurance covering the premises and the facility's operations.

B. The [ ~~facility provider~~ ] shall provide documentation that all vehicles used to transport residents are insured, including vehicles owned by staff.

C. The members of the governing body and staff who have been authorized to handle the facility's or residents' funds shall be bonded or otherwise indemnified against employee dishonesty.

## **22VAC42-11-210. Fundraising.**

The [ ~~facility provider~~ ] shall not use residents in its fundraising activities without written permission of the legal guardian and the permission of residents 14 years or older.

## **22VAC42-11-220. Weapons.**

The [ ~~facility provider~~ ] shall develop and implement written policies and procedures governing the possession and use of firearms, pellet guns, air guns, and other weapons on the facility's premises and [ ~~on~~ during ] facility related activities. The policy shall provide that no firearms, pellet guns, air guns, or other weapons shall be permitted on the premises or at facility-sponsored activities unless the weapons are:

1. In the possession of licensed security personnel or law-enforcement officers;
2. Kept securely under lock and key; or
3. Used by a resident with the legal guardian's permission under the supervision of a responsible adult in accord with policies and procedures developed by the facility for the weapons' lawful and safe use.

## **22VAC42-11-230. Relationship to regulatory authority.**

A. The provider shall submit or make available to the regulatory authority such reports and information as the regulatory authority may require to establish compliance with these interdepartmental standards and other applicable regulations and statutes.

B. The governing body or its official representative shall notify the regulatory authorities within five working days of

any change in administrative structure or newly hired chief administrative officer [ or program director ] .

## **22VAC42-11-240. Facilities serving persons over the age of 17 years.**

Facilities that are approved to serve persons over the age of 17 years shall comply with these interdepartmental standards for all occupants regardless of age, except when it is determined by the regulatory authorities that housing, programs, services, and supervision for such persons are provided separately from those for the [ other ] residents.

## **22VAC42-11-250. Health information.**

A. Health information required by this section shall be maintained for each staff member and for each individual who resides in a building occupied by residents, including each person who is not a staff member or resident of the facility. Health information is to be handled, maintained and stored in a fashion that maintains confidentiality of the information at all times.

### B. Tuberculosis evaluation.

1. At the time of hire [ or residency at the facility ] , each individual shall submit the results of a screening assessment documenting the absence of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health. The screening assessment shall be no older than 30 days.

2. Each individual shall annually submit the results of a screening assessment, documenting that the individual is free of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health.

### C. Subsequent evaluations for tuberculosis.

1. An individual who comes in contact with a known case of infectious tuberculosis shall be screened as determined appropriate based on consultation with the local health department.

2. An individual who develops chronic respiratory symptoms of three weeks duration shall be evaluated immediately for the presence of infectious tuberculosis.

D. An individual suspected of having infectious tuberculosis shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual is free of infectious tuberculosis.

E. The [ facility provider ] shall report any active case of tuberculosis developed by a staff member [ or a resident ] to the local health department.

## **22VAC42-11-260. Physical or mental health of personnel.**

A. The provider or the regulatory authority may require a report of examination by a licensed physician or mental health professional when there are indications that an individual's physical, mental, or emotional health may jeopardize the care of residents.

B. An individual who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may jeopardize the safety of residents or that would prevent the performance of duties shall be removed immediately from contact with residents and food served to residents until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

## **22VAC42-11-270. Qualifications.**

A. Standards establishing minimum position qualifications shall be applicable to all [ facilities providers ] . In lieu of the minimum position qualifications contained in this chapter, [ facilities providers ] subject to (i) the rules and regulations of the Virginia Department of Human Resource Management or (ii) the rules and regulations of a local government personnel office may develop written minimum entry-level qualifications in accord with the rules and regulations of the supervising personnel authority.

B. A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in these standards [ after December 28, 2007, ] shall:

1. Meet the qualifications of the position or positions;
2. Fully comply with all applicable standards for each function; and
3. Demonstrate a working knowledge of the policies and procedures that are applicable to his specific position or positions.

C. When services or consultations are obtained on a contractual basis they shall be provided by professionally qualified personnel.

## **22VAC42-11-280. Job descriptions.**

A. There shall be a written job description for each position that, at a minimum, includes the:

1. Job title;
2. Duties and responsibilities of the incumbent;
3. Job title of the immediate supervisor; and
4. Minimum education, experience, knowledge, skills, and abilities required for entry-level performance of the job.

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B. A copy of the job description shall be given to each person assigned to a position at the time of employment or assignment.

## **22VAC42-11-290. Written personnel policies and procedures.**

A. The provider shall have and implement provider approved written personnel policies and make its written personnel policies readily accessible to each staff member.

B. The provider shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsibilities of each position possess the education, experience, knowledge, skills, and abilities specified in the job description for the position.

## **22VAC42-11-300. Personnel records.**

A. Separate up-to-date written or automated personnel records shall be maintained for each employee, student/intern, volunteer, and contractual service provider for whom background investigations are required by Virginia statute. Content of personnel records of volunteers [ , students/interns ] and contractual service providers may be limited to documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations.

B. The records of each employee shall include:

1. A completed employment application form or other written material providing the individual's name, address, phone number, and social security number or other unique identifier;
2. Educational background and employment history;
3. Written references or notations of oral references;
4. Reports of required health examinations;
5. Annual performance evaluations;
6. Date of employment [ for each position held ] and separation;
7. Documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations;
8. Documentation of educational degrees and of professional certification or licensure;
9. Documentation of all training required by [ ~~this regulation~~ these standards ] and any other training received by individual staff; and
10. A current job description.

C. Personnel records, including separate health records, shall be retained in their entirety for [ at least ] three years after separation from employment, contractual service, student/intern, or volunteer service.

## **22VAC42-11-310. Staff development.**

A. Required initial training:

1. Within seven days following their begin date, each staff member responsible for supervision of children shall receive basic orientation to the facility's behavior intervention policies, procedures and techniques regarding less restrictive interventions, timeout, and physical restraint.

2. Within 14 days following an individual's begin date, or before an individual is alone supervising children, the provider shall [ ~~implement~~ conduct ] emergency preparedness and response training that shall include:

- a. Alerting emergency personnel and sounding alarms;
- b. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);
- c. Using, maintaining, and operating emergency equipment;
- d. Accessing emergency information for residents including medical information; and
- e. Utilizing community support services.

3. Within 14 days following their begin date, new employees, employees transferring from other facilities operated by the same [ ~~sponsor~~ provider ] , relief staff, volunteers and students/interns shall be given orientation and training regarding:

- a. The objectives of the facility;
- b. Practices of confidentiality;
- c. The decisionmaking plan;
- d. The Standards for Interdepartmental Regulation of Children's Residential Facilities including the prohibited actions as outlined in this regulation; and
- e. Other policies and procedures that are applicable to their positions, duties and responsibilities.

4. Within 30 days following their begin date, all staff working with residents shall be enrolled in a standard first aid class and in a cardiopulmonary resuscitation class facilitated by the American Red Cross or other recognized authority, unless the individual is currently certified in first aid and cardiopulmonary resuscitation.

5. Within 30 days following their begin date, all staff working with residents shall be trained in child abuse and neglect, mandatory reporting, maintaining appropriate professional relationships and interaction among staff and residents, and suicide prevention.

6. Within 30 days following their begin date, all staff shall be trained on the facility's policies and procedures regarding [ universal standard ] precautions.

7. Within 30 days following their begin date, all staff shall be trained on [ appropriate siting of children's residential facilities and ] good neighbor policies and community relations.

8. Before they can administer medication, all staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications.

9. All staff shall be trained in any area of quality improvement as identified from the results of the quality improvement plan.

**B. Required annual retraining:**

1. All employees, contractors, students/interns, and volunteers shall complete an annual refresher emergency preparedness and response training that shall include:

- a. Alerting emergency personnel and sounding alarms;
- b. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);
- c. Using, maintaining, and operating emergency equipment;
- d. Accessing emergency information for residents including medical information; and
- e. Utilizing community support services.

2. All staff who administer medication shall complete annual refresher medication training.

3. All child care staff shall receive annual retraining on the provider's behavior intervention and timeout policies and procedures.

4. All staff working with residents shall receive annual retraining in child abuse and neglect, mandatory reporting, maintaining appropriate professional relationships and interaction among staff and residents, and suicide prevention.

5. All staff shall receive annual retraining on the provider's policies and procedures regarding [ universal standard ] precautions.

C. Each full-time staff person who works with residents shall complete an additional 15 hours of annual training applicable to their job duties.

D. [ Facilities Providers ] shall develop and implement written policies and procedures to ensure that part-time staff receive training applicable to their positions.

E. Training provided [ will shall ] be comprehensive and based on the needs of the population served to ensure that staff have the competencies to perform their jobs.

**22VAC42-11-320. Staff supervision.**

The provider shall develop and implement written policies and procedures regarding the supervision of staff, volunteers [ , contractors ] and students/interns. These policies and procedures shall include:

- 1. Type of supervision;
- 2. Frequency of supervision; and
- 3. How the supervision will be documented.

**22VAC42-11-330. [ The applicant Applicant ].**

A. Each applicant shall [ show—evidence provide documentation ] that they have been trained on appropriate siting of children's residential facilities [ and good neighbor policies and community relations ] .

B. The applicant shall be interviewed in person by the regulatory authority to determine the qualifications of the owner or operator as set out in [ this regulation these standards ] .

C. Should the applicant not be qualified to perform the duties of the chief administrative officer, the applicant shall hire an individual with the qualifications, as set out in [ this regulation these standards ] , to perform the duties of the chief administrative officer.

**22VAC42-11-340. Chief administrative officer.**

A. The chief administrative officer shall have the following responsibilities:

- 1. Responsibility for compliance with the Standards for Interdepartmental Regulation of Children's Residential Facilities and other applicable standards;
- 2. Responsibility for all personnel;
- 3. Responsibility for overseeing the facility operation in its entirety, including the approval of the design of the structured program of care and its implementation; and
- 4. Responsibility for the facility's financial integrity.

B. A chief administrative officer appointed after [ the effective date of these standards December 28, 2007, ] shall have at least:

- 1. A master's degree in social work, psychology, counseling, [ or ] nursing [ or administration ] and [ two years of full time paid work experience in a children's residential facility and one year full-time experience in an administrative or supervisory capacity a combination of two years professional experience working with children and in administration and supervision ] ;

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2. A baccalaureate degree in social work, psychology, counseling, [ or ] nursing [ or administration ] and three years [ of combined ] [ full time paid work professional ] experience with children, [ at least two of which were in a children's residential facility and one year of administrative or supervisory experience and in administration and supervisory experience ] ;

3. [ A master's in education and two years of full time paid work experience in a children's residential facility and one year full time experience in an administrative or supervisory capacity or baccalaureate degree in education and three years full time paid work experience with children, at least two of which were in a children's residential facility and one year of administrative or supervisory experience may be accepted for a chief administrative officer of a program whose lead regulatory agency is the Department of Education A baccalaureate degree and a combination of four years professional experience in a children's residential facility and in administration and supervision ] ; or

4. [ A baccalaureate degree and seven years of full time paid work experience with children at least four of which shall be in a children's residential facility and two years of administrative or supervisory experience. For a program whose lead regulatory agency is the Department of Education, a master's degree in education and a combination of two years of professional experience working with children and in administration and supervision or a baccalaureate degree in education and a combination of three years professional experience with children and in administration and supervision may be accepted. ]

C. Any applicant for the chief administrative officer position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the chief administrative officer:

1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and

2. Documentation of prior relevant experience.

### **22VAC42-11-350. Program director.**

A. The facility's program shall be directed by one or more qualified persons.

B. Persons directing programs shall be responsible for the development and implementation of the programs and services offered by the facility, including overseeing assessments, service planning, staff scheduling, and supervision.

C. Persons directing programs of a facility licensed or certified to care for 13 or more residents shall be full time, qualified staff members.

D. A person appointed after [ ~~the effective date of these standards~~ December 28, 2007, ] to direct programs shall have at least:

1. A master's degree in social work, psychology, counseling, or nursing and [ ~~two years of full time paid work experience with children, one of which needs to be in a children's residential facility and one year of administrative or supervisory experience~~ a combination of two years professional experience with children, in a children's residential facility and in administration or supervision ] ;

2. A baccalaureate degree in social work, psychology, counseling or nursing and [ ~~three years full time paid experience working with children, one of which must be in a children's residential facility and one year of administrative or supervisory experience~~ a combination of three years professional experience with children, in a children's residential facility and in administration or supervision ] ;

3. [ ~~A license or certificate issued by the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or alcoholism; A baccalaureate degree and a combination of four years of professional experience with children, in a children's residential facility and in administration or supervision ] ;~~

4. [ ~~A baccalaureate degree and five years of full time paid experience working with children at least three of which must be in a children's residential facility and one year of full time supervisory or administrative experience A license or certificate issued by the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse of alcoholism ] ; or~~

5. [ ~~A master's degree in education and two years of full time paid work experience with children, one of which needs to be in a children's residential facility and one year of administrative or supervisory experience or a baccalaureate degree in education with an endorsement in at least one area of disability served by the program and three years full time paid experience working with children, one of which must be in a children's residential facility and one year of administrative or supervisory experience may be accepted for a program director of a program whose lead regulatory agency is the Department of Education. For a program whose lead regulatory agency is the Department of Education, a master's degree in education and a combination of two years of professional experience with children, in a children's residential facility and in administration or supervision or a baccalaureate degree in education with an endorsement in at least one area of disability served by the program and a combination of three years professional experience working with children, in a children's residential facility and in administration or supervision. ]~~

E. Any applicant for the program director position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the program director:

1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and
2. Documentation of prior relevant experience.

**22VAC42-11-360. Case manager.**

A. Case managers shall have the responsibility for:

1. Coordination of all services offered to each resident; and
2. Provision of case management services as required in 22VAC42-11-760 A.

B. Case managers shall have:

1. A master's degree in social work, psychology, or counseling;
2. A baccalaureate degree in social work or psychology with documented field work experience and must be supervised by the program director or other staff employed by the provider with the same qualifications as required by 22VAC42-11-350 D; or
3. A baccalaureate degree and three years of [ full time paid professional ] experience working with children [ at least one of which shall be in a children's residential facility ] .

**22VAC42-11-370. Child care supervisor.**

A. Child care supervisors shall have responsibility for the:

1. Development of the daily living program within each child care unit; and
2. Orientation, training and supervision of direct care workers.

B. Child care supervisors shall have:

1. A baccalaureate degree in social work or psychology and two years of [ full time paid professional ] experience working with children one year of which must have been in a residential facility for children;
2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years [ full time paid professional ] experience working with children with at least two years in a residential facility for children; or
3. A combination of education and experience working with children as approved by the lead regulatory authority.

**22VAC42-11-380. Child care staff.**

A. The child care worker shall have responsibility for guidance and supervision of the children to whom he is assigned including:

1. Overseeing physical care;
2. Development of acceptable habits and attitudes;
3. Management of resident behavior; and
4. Helping to meet the goals and objectives of any required service plan.

B. A child care worker and a relief child care worker shall:

1. Have a baccalaureate degree in human services;
2. Have an associates degree and three months experience working with children; or
3. Be a high school graduate or have a General Education Development Certificate (G.E.D.) and have six months of experience working with children.

C. Child care staff with a high school diploma or G.E.D. with no experience working with children may not work alone, but may be employed as long as they are working directly with the [ ~~child care supervisor, chief administrative officer, program director, or case manager~~ chief administrative officer, program director, case manager, child care supervisor or a child care worker with one or more years professional experience working with children. This section does not apply to the juvenile correctional facilities where staff are trained in a comprehensive basic skills curriculum before beginning their child care duties. ]

D. An individual hired, promoted, demoted, or transferred to a child care worker's position after the effective date of these standards shall be at least 21 years old [ , except as provided in 22VAC42-11-270 A ] .

E. The provider shall not be dependent on temporary contract workers to provide [ ~~child~~ resident ] care.

**22VAC42-11-390. Relief staff.**

Qualified relief staff shall be employed as necessary to meet the needs of the programs and services offered and to maintain a structured program of care in accordance with 22VAC42-11-780.

**22VAC42-11-400. Volunteers and students/interns.**

A. A facility that uses volunteers or students/interns shall develop and implement written policies and procedures governing their selection and use.

B. The facility shall not be dependent upon [ ~~use of~~ ] volunteers or students/interns to provide basic services.

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C. Responsibilities of volunteers and students/interns shall be clearly defined in writing.

D. Volunteers and students/interns shall have qualifications appropriate to the services they render.

## **22VAC42-11-410. Support functions.**

A. Child care workers and other staff responsible for child care may assume the duties of nonchild care personnel only when these duties do not interfere with their child care responsibilities.

B. Residents shall not be solely responsible for support functions, including but not necessarily limited to, food service, maintenance of building and grounds, and housekeeping.

## **22VAC42-11-420. Buildings, inspections and building plans.**

A. All buildings and building related equipment shall be inspected and approved by the local building official. Approval shall be documented by a certificate of occupancy.

B. The facility shall document at the time of its original application evidence of consultation with state or local fire prevention authorities.

C. The facility shall document annually after the initial application that buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51).

D. At the time of the original application and at least annually thereafter the buildings shall be inspected and approved by state or local health authorities, whose inspection and approval shall include:

1. General sanitation;
2. The sewage disposal system;
3. The water supply; and
4. Food service operations.

E. The buildings and physical environment shall provide adequate space and shall be of a design that is suitable to house the programs and services provided and meet specialized needs of the residents.

F. Building plans and specifications for new construction, change in use of existing buildings, and any structural modifications or additions to existing buildings shall be submitted to and approved by the lead regulatory agency and by other appropriate regulatory authorities.

G. Swimming pools shall be inspected annually by the state or local health authorities or by a swimming pool business.

## **22VAC42-11-430. Heating systems, ventilation and cooling systems.**

A. Heat shall be evenly distributed in all rooms occupied by the residents such that a temperature no less than 68°F is maintained, unless otherwise mandated by state or federal authorities.

B. Natural or mechanical ventilation to the outside shall be provided in all rooms used by residents.

C. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F.

## **22VAC42-11-440. Lighting.**

A. Artificial lighting shall be by electricity.

B. All areas within buildings shall be lighted for safety and [ the lighting ] shall be sufficient for the activities being performed.

C. Lighting in halls shall be adequate and shall be continuous at night.

D. Operable flashlights or battery-powered lanterns shall be available for each staff member on the premises between dusk and dawn to use in emergencies.

E. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

## **22VAC42-11-450. Plumbing.**

A. Plumbing shall be maintained in good operational condition.

B. An adequate supply of hot and cold running water shall be available at all times.

C. Precautions shall be taken to prevent scalding from running water. Water temperatures should be maintained at 100°F – 120°F.

## **22VAC42-11-460. Toilet facilities.**

A. There shall be at least one toilet, one hand basin, and one shower or bathtub in each living unit.

B. There shall be at least one bathroom equipped with a bathtub in each facility.

C. There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities licensed before July 1, 1981 [ ~~and have made no structural changes or constructed any buildings~~ ] .

D. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981, except secure custody facilities. Facilities licensed after [ ~~the effective date of these standards must~~ December 28, 2007, shall ] comply with the one-to-four ratio.

E. The maximum number of staff members on duty in the living unit shall be counted in determining the required number of toilets and hand basins when a separate bathroom is not provided for staff.

F. There shall be at least one mirror securely fastened to the wall at a height appropriate for use in each room where hand basins are located except in security rooms in hospitals and secure custody facilities.

## **22VAC42-11-470. Personal necessities.**

A. An adequate supply of personal necessities shall be available to the residents at all times for purposes of personal hygiene and grooming.

B. Clean, individual washcloths and towels shall be in good repair and available once each week and more often if needed.

C. When residents are incontinent or not toilet trained:

1. Provision shall be made for sponging, diapering or other similar care on a nonabsorbent changing surface that shall be cleaned with warm soapy water after each use.

2. A covered diaper pail, or its equivalent, with leak proof disposable liners shall be [ ~~available~~ used to dispose of diapers ] . If both cloth and disposable diapers are used there shall be a diaper pail for each.

3. Adapter seats and toilet chairs shall be cleaned immediately after each use with appropriate cleaning materials.

4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting a child or themselves with toileting.

5. Appropriate privacy, confidentiality and dignity shall be maintained for residents during toileting and diapering.

## **22VAC42-11-480. Sleeping areas.**

A. When residents are four years of age or older, boys and girls shall have separate sleeping areas.

B. No more than four children [ ~~may~~ shall ] share a bedroom or sleeping area except as provided by other applicable state regulations governing juvenile correctional centers.

C. Children who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking shall be provided with a planned, personalized means of effective egress for use in emergencies.

D. Beds shall be at least three feet apart at the head, foot, and sides and double-decker beds shall be at least five feet apart at the head, foot, and sides.

E. Sleeping quarters in facilities licensed by DSS prior to July 1, 1981, and facilities established, constructed or

structurally modified after July 1, 1981, except for primitive campsites, shall have:

1. At least 80 square feet of floor area in a bedroom accommodating one person;

2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and

3. Ceilings with a primary height at least 7-1/2 feet in height exclusive of protrusions, duct work, or dormers.

F. Each child shall have a separate, clean, comfortable bed equipped with a clean mattress, clean pillow, clean blankets, clean bed linens, and, if needed, a clean waterproof mattress cover.

G. Bed linens shall be changed at least every seven days and more often if needed.

H. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code.

I. Cribs shall be provided for residents under two years of age.

J. Each resident shall be assigned drawer space and closet space, or their equivalent, which is accessible to the sleeping area for storage of clothing and personal belongings except in secure custody facilities.

K. The [ ~~sleeping areas~~<sup>2</sup> environment of sleeping areas ] shall be conducive to sleep and rest.

## **22VAC42-11-490. Smoking prohibition.**

Smoking shall be prohibited in living areas and in areas where residents participate in programs.

## **22VAC42-11-500. Residents' privacy.**

A. When bathrooms are not designated for individual use, except in secure custody facilities:

1. Each toilet shall be enclosed for privacy, and

2. Bathtubs and showers shall provide visual privacy for bathing by use of enclosures, curtains or other appropriate means.

B. Windows in bathrooms, sleeping areas, and dressing areas shall provide for privacy.

C. Every sleeping area shall have a door that may be closed for privacy or quiet and this door shall be readily opened in case of fire or other emergency. In secure custody facilities, the door may be equipped with an observation window.

D. Residents shall be provided privacy from routine sight supervision by staff members of the opposite gender while bathing, dressing, or conducting toileting activities. This

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section does not apply to medical personnel performing medical procedures, to staff providing assistance to infants, or to staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's record.

E. Video and audio monitoring shall be permitted only [ ~~in common hallways and common areas. All such monitoring shall have the approval of the regulatory authority and if licensed by DMHMRSAS, the approval of the Office of Human Rights. DJJ-certified facilities shall obtain the approval of the regulatory authority before any video or audio monitoring is permitted. Video and audio monitoring is prohibited in bathrooms, dressing areas, and bedrooms with the approval of the lead regulatory agency and for facilities licensed by DMHMRSAS, the approval of the Office of Human Rights~~ ].

## **22VAC42-11-510. Living rooms and indoor recreation space.**

A. Each living unit, except for secure custody, shall have a living room, or other area for informal use, for relaxation and entertainment. The furnishings shall provide a comfortable, home like environment that is appropriate to the ages of the residents.

B. All facilities shall have indoor recreation space that contains indoor recreation materials appropriate to the ages and interests of the residents.

C. Facilities licensed or certified to care for 13 or more residents shall have [ indoor ] recreation space distinct from the living room. [ Recreation space is not required in every living unit. ]

## **22VAC42-11-520. Study space.**

A. Facilities serving a school-age population shall provide study space. Study space may be assigned in areas used interchangeably for other purposes.

B. Study space shall be well lighted, quiet, and equipped with tables or desks and chairs.

## **22VAC42-11-530. Kitchen and dining areas.**

A. Meals shall be served in areas equipped with sturdy tables and benches or chairs that are size and age appropriate for the residents.

B. Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals.

C. Walk-in refrigerators, freezers, and other enclosures shall be equipped to permit emergency exits.

## **22VAC42-11-540. Laundry areas.**

Appropriate space and equipment in good repair shall be provided if laundry is done at the facility.

## **22VAC42-11-550. Storage.**

Space shall be provided for safe storage of items such as first-aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials.

## **22VAC42-11-560. Staff quarters.**

A. A separate, private bedroom shall be provided for staff and their families when a staff member is on duty for 24 consecutive hours or more.

B. A separate private bathroom shall be provided for staff and their families when there are more than four persons in the living unit and the staff person is on duty for 24 consecutive hours or more.

C. Staff and members of their families shall not share bedrooms with residents.

## **22VAC42-11-570. Office space.**

Space shall be provided for administrative activities including, as appropriate to the program, confidential conversations and provision for storage of records and materials.

## **22VAC42-11-580. Buildings and grounds.**

A. The facility's grounds shall be safe, properly maintained, and free of clutter and rubbish. The grounds include, but are not limited to, all areas where residents, staff, and visitors may reasonably be expected to have access, including roads, pavements, parking lots, open areas, stairways, railings, and potentially hazardous or dangerous areas.

B. The interior and exterior of all buildings shall be safe, properly maintained, clean and in good working order. This includes, but is not limited to, required locks, mechanical devices, indoor and outdoor equipment, and furnishings.

C. Outdoor recreation space shall be available and appropriately equipped for the residents' use.

## **22VAC42-11-590. Equipment and furnishings.**

A. All furnishings and equipment shall be safe, clean, and suitable to the ages and number of residents.

B. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which children sleep or participate in programs.

## **22VAC42-11-600. Housekeeping and maintenance.**

A. All buildings shall be well ventilated and free of stale, musty, or foul odors.

B. Adequate provision shall be made for the collection and legal disposal of garbage and waste materials.

C. Buildings shall be kept free of flies, roaches, rats, and other vermin.

D. A sanitizing agent shall be used in the laundering of bed, bath, table, and kitchen linens.

## **22VAC42-11-610. Farm and domestic animals.**

A. Horses and other animals maintained on the premises shall be quartered at a reasonable distance from sleeping, living, eating and food preparation areas, as well as a safe distance from water supplies.

B. Animals maintained on the premises shall be tested, inoculated and licensed as required by law.

C. The premises shall be kept free of stray domestic animals.

D. Pets shall be provided with clean quarters and adequate food and water.

## **22VAC42-11-620. Acceptance of children.**

Children shall be accepted only by court order or by written placement agreement with legal guardians. This requirement does not apply to temporary care facilities when self-admission is made according to Virginia law.

## **22VAC42-11-630. Admission procedures.**

A. The facility shall have written criteria for admission that shall include:

1. A description of the population to be served;
2. A description of the types of services offered;
3. Intake and admission procedures;
4. Exclusion criteria to define those behaviors or problems that the facility does not have the staff with experience or training to manage; and
5. Description of how educational services will be provided to the population being served.

B. The facility shall accept and serve only those children whose needs are compatible with the services provided through the facility unless a child's admission is ordered by a court of competent jurisdiction.

C. Acceptance of a child as eligible for respite care by a facility approved to provide residential respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

D. Each facility shall provide documentation showing proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's program description as defined by the facility's criteria of admission.

## **22VAC42-11-640. Maintenance of residents' records.**

A. A separate written or automated case record shall be maintained for each resident. In addition, all correspondence

and documents received by the facility relating to the care of that resident [ ~~should~~ shall ] be maintained as part of the case record. A separate health record may be kept on each resident.

B. Each case record and health record shall be kept up to date and in a uniform manner.

C. The provider shall develop and implement written policies and procedures for management of all records, written and automated, that shall describe confidentiality, accessibility, security, and retention of records pertaining to residents, including:

1. Access, duplication, dissemination, and acquiring of information only to persons legally authorized according to federal and state laws;

2. Facilities using automated records shall address procedures that include:

- a. How records are protected from unauthorized access;
- b. How records are protected from unauthorized Internet access;
- c. How records are protected from loss;
- d. How records are protected from unauthorized alteration; and
- e. How records are backed up;

3. Security measures to protect records from loss, unauthorized alteration, inadvertent or unauthorized access, disclosure of information and transportation of records between service sites;

4. Designation of person responsible for records management; and

5. Disposition of records in the event the facility ceases to operate.

D. The policy shall specify what information is available to the resident.

E. Active and closed records shall be kept in areas that are accessible to authorized staff and protected from unauthorized access, fire, and flood.

1. When not in use written records shall be stored in a metal file cabinet or other metal compartment.

2. Facility staff shall assure the confidentiality of the residents' records by placing them in a locked cabinet or drawer or in a locked room when the staff member is not present.

F. Each resident's written case and health records shall be stored separately subsequent to the resident's discharge according to applicable statutes and regulations.

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G. Written and automated records shall be retained in their entirety for a minimum of three years after the date of discharge unless otherwise specified by state or federal requirements.

H. The face sheet shall be retained permanently unless otherwise specified by state or federal requirements.

## **22VAC42-11-650. Interstate Compact on the Placement of Children.**

A. Documentation of the prior approval of the administrator of the Virginia Interstate Compact on the Placement of Children, Virginia Department of Social Services, shall be retained in the record of each resident admitted from outside Virginia. The requirements of this section shall not apply to a facility providing documentation that the administrator of the Virginia Interstate Compact has determined the facility is statutorily exempt from the compact's provisions.

B. Documentation that the provider has sent copies of all serious incident reports regarding any child placed through the Interstate Compact to the administrator of the Virginia Interstate Compact on the Placement of Children shall be kept in the resident's record.

C. No later than five days after a resident has been transferred to another facility operated by the same sponsor, the resident's record shall contain documentation that the administrator of the Virginia Interstate Compact on the Placement of Children was notified in writing of the resident's transfer.

D. No later than 10 days after discharge the resident's record shall contain documentation that the administrator of the Virginia Interstate Compact on the Placement of Children was notified in writing of the discharge.

E. The provider shall not discharge or send out-of-state youth in the custody of out-of-state social services agencies and courts to reside with a parent, relative, or other individual who lives in Virginia without the approval of the administrator of the Virginia Interstate Compact on the Placement of Children.

## **22VAC42-11-660. Participation of residents in human research.**

The provider shall:

1. Implement a written policy stating that residents will not be used as subjects of human research; or
2. Document approval, as required by the regulatory authorities, for each research project using residents as subjects of human research [ , unless such research is exempt from review ] .

## **22VAC42-11-670. Emergency and self-admissions.**

Providers accepting emergency or self-admissions shall:

1. Develop and implement written policies and procedures governing such admissions that shall include procedures to make and document prompt efforts to obtain (i) a written placement agreement signed by the legal guardian or (ii) the order of a court of competent jurisdiction;

2. Place in each resident's record the order of a court of competent jurisdiction, a written request for care, or documentation of an oral request for care; and justification of why the resident is to be admitted on an emergency basis; and

3. Clearly document in written assessment information gathered for the emergency admission that the individual meets the facility's criteria for admission.

## **22VAC42-11-680. Application for admission.**

A. Admission shall be based on evaluation of an application for admission. The requirements of this section do not apply to court-ordered placements or transfer of a resident between residential facilities located in Virginia and operated by the same sponsor.

B. Providers shall develop, and fully complete prior to acceptance for care, an application for admission that is designed to compile information necessary to determine:

1. The educational needs of the prospective resident;
2. The mental health, emotional, and psychological needs of the prospective resident;
3. The physical health needs, including the immunization needs, of the prospective resident;
4. The protection needs of the prospective resident;
5. The suitability of the prospective resident's admission;
6. The behavior support needs of the prospective resident; and
7. Information necessary to develop a service plan and a behavior support plan.

C. The resident's record shall contain a completed application for admission at the time of a routine admission or within 30 days after an emergency admission.

D. Each facility shall develop and implement written policies and procedures to assess each prospective resident as part of the application process to ensure that:

1. The needs of the prospective resident can be addressed by the facility's services;
2. The facility's staff are trained to meet the prospective resident's needs; and
3. The admission of the prospective resident would not pose any significant risk to (i) the prospective resident or (ii) the facility's residents or staff.

## **22VAC42-11-690. Written placement agreement.**

A. The facility, except a facility that accepts admission only upon receipt of the order of a court of competent jurisdiction, shall develop a written placement agreement that:

1. Authorizes the resident's placement;
2. Addresses acquisition of and consent for any medical treatment needed by the resident;
3. Addresses the rights and responsibilities of each party involved;
4. Addresses financial responsibility for the placement;
5. Addresses visitation with the resident; and
6. Addresses the education plan for the resident and the responsibilities of all parties.

B. Each resident's record shall contain, prior to a routine admission, a completed placement agreement signed by a facility representative and the legal guardian or placing agency, except as permitted for temporary emergency shelters pursuant to §63.2-1817 of the Code of Virginia.

C. The record of each person admitted based on a court order shall contain a copy of the court order.

## **22VAC42-11-700. Face sheet.**

A. At the time of admission, each resident's record shall include a completed face sheet that contains (i) the resident's full name, last known residence, birth date, birthplace, gender, race, social security number or other unique identifier, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, placing agency, [ ~~and~~ ] emergency contacts [ and parents, if appropriate ] .

B. Information shall be updated when changes occur.

C. The face sheet for pregnant teens shall also include the expected date of delivery and the name of the hospital to provide delivery services to the resident.

D. The face sheet of residents who are transferred to facilities operated by the same sponsor shall indicate the address and dates of placement and transfer at each location.

E. At the time of discharge the following information shall be added to the face sheet:

1. Date of discharge;
2. Reason for discharge;
3. Names and addresses of persons to whom the resident was discharged; and
4. Forwarding address of the resident, if known.

## **22VAC42-11-710. Initial objectives and strategies.**

Within three days following admission, individualized, measurable objectives and strategies for the first 30 days shall be developed, distributed to affected staff and the resident, and placed in the resident's record. The objectives and strategies shall be based on the reasons for admitting the resident. The requirements of this section do not apply to secure detention facilities [ ~~—except when a juvenile is confined in postdispositional detention~~ ] .

## **22VAC42-11-720. Service plan/quarterly reports.**

A. An individualized service plan shall be developed and placed in the resident's record within 30 days following admission and implemented immediately thereafter.

B. Individualized service plans shall describe in measurable terms the:

1. Strengths and needs of the resident;
2. Resident's current level of functioning;
3. Goals, objectives and strategies established for the resident;
4. Projected family involvement;
5. Projected date for accomplishing each objective; and
6. Status of the projected discharge plan and estimated length of stay except that this requirement shall not apply to a facility that discharges only upon receipt of the order of a court of competent jurisdiction.

C. The initial service plan shall be reviewed within 60 days of the initial plan and within each 90-day period thereafter and revised as necessary.

D. The provider shall develop and implement written policies and procedures to document progress of the resident towards meeting goals and objectives of the service plan that shall include the:

1. Format;
2. Frequency; and
3. Person responsible.

E. There shall be a documented quarterly review of each resident's progress 60 days following the initial service plan and within each 90-day period thereafter and shall report the:

1. Resident's progress toward meeting the plan's objectives;
2. Family's involvement;
3. Continuing needs of the resident;
4. Resident's progress towards discharge; and
5. Status of discharge planning.

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F. Each plan and quarterly progress report shall include the date it was developed and the signature of the person who developed it.

G. Staff responsible for daily implementation of the resident's individualized service plan shall be able to describe the resident's behavior in terms of the objectives in the plan.

H. There shall be documentation showing the involvement of the following parties unless clearly inappropriate, in developing and updating the individualized service plan and in developing the quarterly progress report:

1. The resident;
2. The resident's family, [ if appropriate, and ] legal guardian [ ~~or legally authorized representative~~ ] ;
3. The placing agency; and
4. Facility staff.

I. The initial individualized service plan, each update, and all quarterly progress reports shall be distributed to the resident; the resident's family, legal guardian, or legally authorized representative; the placing agency; and appropriate facility staff if allowed by federal guidelines and using all procedures as required by federal guidelines.

J. The requirements of this section do not apply to secure detention facilities except when a juvenile is confined in postdispositional detention.

## **22VAC42-11-730. Resident transfer between residential facilities located in Virginia and operated by the same sponsor.**

A. Except when transfer is ordered by a court of competent jurisdiction, the receiving provider shall document at the time of transfer:

1. Preparation through sharing information with the resident, the family and the placing agency about the facility, the staff, the population served, activities and criteria for admission;
2. Notification to the family, if appropriate; the resident, the placement agency and the legal guardian;
3. Receipt from the sending facility of a written summary of the resident's progress while at the facility, justification for the transfer, and the resident's current strengths and needs; and
4. Receipt of the resident's record.

B. The sending facility shall retain a copy of the face sheet and a written summary of the child's progress while at the facility and shall document the date of transfer and the name of the facility to which the resident has been transferred.

## **22VAC42-11-740. Discharge.**

A. The provider shall have written criteria for discharge that shall include:

1. Criteria for a resident's completing the program that are consistent with the facility's programs and services;
2. Conditions under which a resident may be discharged before completing the program; and
3. Procedures for assisting placing agencies in placing the residents should the facility cease operation.

B. The provider's criteria for discharge shall be accessible to prospective residents, legal guardians, and placing agencies.

C. The record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.

D. Residents shall be discharged only to the legal guardian or legally authorized representative.

E. A facility approved to provide residential respite care shall discharge a resident when the legal guardian no longer intends to use the facility's services.

F. Information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be provided to the legal guardian or legally authorized representative, as appropriate.

G. Unless discharge is ordered by a court of competent jurisdiction, prior to the planned discharge date, each resident's record shall contain:

1. Documentation that discharge has been planned and discussed with the parent, legal guardian, child-placing agency, and resident; and
2. A written discharge plan.

H. Discharge summaries.

1. No later than 30 days after discharge, a comprehensive discharge summary shall be placed in the resident's record and sent to the persons or agency that made the placement. The discharge summary shall review:

- a. Services provided to the resident;
- b. The resident's progress toward meeting service plan objectives;
- c. The resident's continuing needs and recommendations, if any, for further services and care;
- d. Reasons for discharge and names of persons to whom resident was discharged;
- e. Dates of admission and discharge; and

f. Date the discharge summary was prepared and the signature of the person preparing it.

2. In lieu of a comprehensive discharge summary, the record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.

**22VAC42-11-750. Placement of residents outside the facility.**

A resident shall not be placed outside the facility prior to the facility's obtaining a child-placing agency license from the Department of Social Services, except as permitted by statute or by order of a court of competent jurisdiction.

**22VAC42-11-760. Case management services.**

A. The program of the facility [ ~~except a secure detention facility in which juveniles are not confined with a suspended commitment to the Department of Juvenile Justice.~~ ] shall be designed to provide case management services [ ~~that address. In secure detention this requirement applies only to residents confined in postdispositional detention. Case management services shall address~~ ]:

1. Helping the resident and the parents or legal guardian to understand the effects on the resident of separation from the family and the effect of group living;
2. Assisting the resident and the family to maintain their relationships and prepare for the resident's future care;
3. Utilizing appropriate community resources to provide services and maintain contacts with such resources;
4. Helping the resident strengthen his capacity to function productively in interpersonal relationships;
5. Conferring with the child care staff to help them understand the resident's needs in order to promote adjustment to group living; and
6. Working with the resident and with the family or any placing agency that may be involved in planning for the resident's future and in preparing the resident for the return home or to another family, for independent living, or for other residential care.

B. The provision of case management services shall be documented in each resident's record.

**22VAC42-11-770. Therapy.**

Therapy, if provided, shall be provided by an individual (i) licensed as a therapist by the Department of Health Professions or (ii) who is licensure eligible and working under the supervision of a licensed therapist, unless exempted from these requirements under the Code of Virginia.

**22VAC42-11-780. Structured program of care.**

A. There shall be evidence of a structured program of care designed to:

1. Meet the residents' physical and emotional needs;
2. Provide protection, guidance, and supervision; and
3. Meet the objectives of any required service plan.

B. There shall be evidence of a structured daily routine designed to ensure the delivery of program services.

C. A daily communication log shall be maintained to inform staff of significant happenings or problems experienced by residents.

D. Health and dental complaints and injuries shall be recorded and shall include the (i) resident's name, complaint, and affected area and (ii) time of the complaint.

E. The identity of the individual making each entry in the daily [ ~~activity~~ communication ] log shall be recorded.

F. Routines shall be planned to ensure that each resident receives the amount of sleep and rest appropriate for his age and physical condition.

G. Staff shall promote good personal hygiene of residents by monitoring and supervising hygiene practices each day and by providing instruction when needed.

H. The structured daily routine shall comply with any facility and locally imposed curfews.

**22VAC42-11-790. Health care procedures.**

A. The provider shall have and implement written procedures for promptly:

1. Providing or arranging for the provision of medical and dental services for health problems identified at admission;
2. Providing or arranging for the provision of routine ongoing and follow-up medical and dental services after admission;
3. Providing emergency services for each resident as provided by statute or by the agreement with the resident's legal guardian;
4. Providing emergency services for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and
5. Ensuring that the required information in subsection B of this section is accessible and up to date.

B. The following written information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency:

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1. Name, address, and telephone number of the physician and dentist to be notified;

2. Name, address, and telephone number of a relative or other person to be notified;

3. Medical insurance company name and policy number or Medicaid number;

4. Information concerning:

a. Use of medication;

b. All allergies, including medication allergies;

c. Substance abuse and use; and

d. Significant past and present medical problems.

5. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent; and

Subdivisions 3 and 5 of this subsection do not apply to secure detention facilities except when a resident is confined in postdispositional detention.

C. Facilities approved to provide respite care shall update the information required by subsection B of this section at the time of each stay at the facility.

## **22VAC42-11-800. Medical examinations and treatment.**

A. Each child accepted for care shall have a physical examination by or under the direction of a licensed physician no earlier than 90 days prior to admission to the facility or no later than seven days following admission, except (i) the report of an examination within the preceding 12 months shall be acceptable if a child transfers from one residential facility licensed or certified by a state agency to another, (ii) a physical examination shall be conducted within 30 days following an emergency admission if a report of physical examination is not available, and (iii) this requirement does not apply if a child is admitted to a secure detention facility or to a temporary care facility.

B. ~~[ At the time of placement~~ Within seven days of placement], except for secure detention ~~[ and emergency placements]~~, each resident shall have had a screening assessment for tuberculosis as evidenced by the completion of a screening form containing, at a minimum, the elements found on the current screening form published by the Virginia Department of Health. The screening assessment can be no older than 30 days. Secure detention ~~[ and emergency placements]~~ shall have completed the screening assessment on each resident within five days of placement.

C. A screening assessment for tuberculosis shall be completed annually on each resident as evidenced by the completion of a form containing, at a minimum, the elements of the screening form published by the Virginia Department of Health.

D. Each resident's health record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by or under the direction of a licensed physician including any recommendation for follow-up care, and (iii) documentation of the provision of follow-up medical care recommended by the physician or as indicated by the needs of the resident.

E. Each physical examination report shall include:

1. Information necessary to determine the health and immunization needs of the resident, including:

a. Immunizations administered at the time of the exam;

b. Vision exam;

c. Hearing exam;

d. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis;

e. Allergies, chronic conditions, and handicaps, if any;

f. Nutritional requirements, including special diets, if any;

g. Restrictions on physical activities, if any; and

h. Recommendations for further treatment, immunizations, and other examinations indicated;

2. Date of the physical examination; and

3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

F. A child with a communicable disease shall not be admitted unless a licensed physician certifies that:

1. The facility is capable of providing care to the child without jeopardizing residents and staff; and

2. The facility is aware of the required treatment for the child and the procedures to protect residents and staff.

The requirements of this subsection shall not apply to temporary shelters and secure detention facilities.

G. Each resident's health record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) documentation of follow-up dental care recommended by the dentist or as indicated by the needs of the resident. This requirement does not apply to secure detention facilities, temporary care facilities, and respite care facilities.

H. Each resident's health record shall include notations of health and dental complaints and injuries and shall summarize symptoms and treatment given.

I. Each resident's health record shall include, or document the facility's efforts to obtain, treatment summaries of ongoing psychiatric or other mental health treatment and

reports, if applicable. This subsection does not apply to secure detention facilities except when a juvenile is confined in detention with a suspended commitment to the Department of Juvenile Justice.

J. The provider shall develop and implement written policies and procedures that include use of [ universal standard ] precautions and addresses communicable and contagious medical conditions. These policies and procedures shall be approved by a medical professional.

K. A well-stocked first-aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

### **22VAC42-11-810. Medication.**

A. All medication shall be securely locked and properly labeled.

B. All staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications before they can administer medication.

C. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

D. A program of medication, including over-the-counter medication, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication.

E. Medication prescribed by a person authorized by law shall be administered as prescribed.

F. A medication administration record shall be maintained of all medicines received by each resident and shall include:

1. Date the medication was prescribed;

2. Drug name;

3. Schedule for administration;

4. Strength;

5. Route;

[ ~~6. Actual time administered;~~

~~7. 6.] Identity of the individual who administered the medication; and~~

[ ~~8. 7.] Dates the medication was discontinued or changed.~~

G. In the event of a medication error or an adverse drug reaction, first aid shall be administered if indicated. Staff shall promptly contact a poison control center, pharmacist, nurse, or physician and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician

shall be notified as soon as possible and the actions taken by staff shall be documented.

H. Medication refusals shall be documented including action taken by staff. [ ~~The prescribing professional shall be contacted unless the refusal is addressed in standing orders.~~ ]

I. The provider shall develop and implement written policies and procedures for documenting medication errors, reviewing medication errors and reactions and making any necessary improvements, the disposal of medication, the storage of controlled substances, and the distribution of medication off campus. The policy and procedures must be approved by a health care professional. The provider shall keep documentation of this approval.

J. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which children sleep or participate in programs.

K. Syringes and other medical implements used for injecting or cutting skin shall be locked.

### **22VAC42-11-820. Nutrition.**

A. Each resident shall be provided a daily diet that (i) consists of at least three nutritionally balanced meals and an evening snack, (ii) includes an adequate variety and quantity of food for the age of the resident, and (iii) meets minimum nutritional requirements and the U.S. Dietary Guidelines.

B. Menus of actual meals served shall be kept on file for at least six months.

C. Special diets shall be provided when prescribed by a physician and the established religious dietary practices of the resident shall be observed.

D. Staff who eat in the presence of the residents shall be served the same meals as the residents unless a special diet has been prescribed by a physician for the staff or residents or the staff or residents are observing established religious dietary practices.

E. There shall not be more than 15 hours between the evening meal and breakfast the following day.

F. Providers shall assure that food is available to residents who [ wish need ] to eat breakfast before the 15 hours have expired.

G. Providers shall receive approval from their regulatory authority if they wish to extend the time between meals on weekends and holidays. There shall never be more than 17 hours between the evening meal and breakfast the following day on weekends and holidays.

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## **22VAC42-11-830. Staff supervision of residents.**

A. No member of the child care staff shall be on duty more than six consecutive days without a rest day, except in an emergency [ or as approved by the lead regulatory agency for live-in staff ] .

B. Child care staff shall have an average of at least two rest days per week in any four-week period. Rest days shall be in addition to vacation time and holidays.

C. Child care staff other than live-in staff shall not be on duty more than 16 consecutive hours, except in an emergency.

D. There shall be at least one trained child care worker, on duty and actively supervising residents at all times that one or more residents are present.

E. Whenever children are being supervised by staff there shall be at least one staff person present with a current basic certificate in standard first aid and a current certificate in cardiopulmonary resuscitation issued by the American Red Cross or other recognized authority.

### F. Supervision policies.

1. The provider shall develop and implement written policies and procedures that address staff supervision of children including contingency plans for resident illnesses, emergencies, off-campus activities, and resident preferences. These policies and procedures shall be based on the:

- a. Needs of the population served;
- b. Types of services offered;
- c. Qualifications of staff on duty; and
- d. Number of residents served.

2. At all times the ratio of staff to residents shall be at least one staff to eight residents for facilities during the hours residents are awake, except when the lead regulatory agency has approved or required a supervision plan with a different ratio based on the needs of the population served.

3. Providers requesting a ratio that allows a higher number of residents to be supervised by one staff person than was approved or required shall submit a justification to the lead regulatory agency that shall include:

- a. Why resident care will not be adversely affected; and
- b. How residents' needs will be met on an individual as well as group basis.

4. Written policies and procedures governing supervision of residents and any justifications for a ratio deviation that allows a higher number of residents to be supervised by one staff than was approved or required, shall be reviewed

and approved by the regulatory authority prior to implementation.

5. The supervision policies or a summary of the policies shall be provided, upon request, to the placing agency or legal guardian prior to placement.

6. The Board of Juvenile Justice shall determine the supervision ratios for facilities regulated by the Department of Juvenile Justice.

## **22VAC42-11-840. Emergency telephone numbers.**

A. There shall be an emergency telephone number where a staff person may be immediately contacted 24 hours a day.

B. Residents who are away from the facility and the adults responsible for their care during the absence shall be furnished with the emergency phone number.

## **22VAC42-11-850. Searches.**

A. Strip searches and body cavity searches are prohibited except:

1. As permitted by other applicable state regulations; or
2. As ordered by a court of competent jurisdiction.

B. A provider that does not conduct pat downs shall have a written policy prohibiting them.

C. A provider that conducts pat downs shall develop and implement written policies and procedures governing them that shall provide that:

1. Pat downs shall be limited to instances where they are necessary to prohibit contraband;
2. Pat downs shall be conducted by personnel of the same gender as the resident being searched;
3. Pat downs shall be conducted only by personnel who are specifically authorized to conduct searches by the written policies and procedures; and
4. Pat downs shall be conducted in such a way as to protect the subject's dignity and in the presence of one or more witnesses.

## **22VAC42-11-860. Behavior support.**

A. Within 30 days of admission, the provider shall develop and implement a written behavior support plan that allows the resident to self-manage his own behaviors. Each individualized plan shall include:

1. Identification of positive and problem behavior;
2. Identification of triggers for behaviors;
3. Identification of successful intervention strategies for problem behavior;
4. Techniques for managing anger and anxiety; and

5. Identification of interventions that may escalate inappropriate behaviors.

B. Individualized behavior support plans shall be developed in consultation with the:

1. Resident;
2. Legal guardian;
3. Resident's parents, if applicable;
4. Program director;
5. Placing agency staff; and
6. Other applicable individuals.

C. Prior to working alone with an assigned resident each staff member shall demonstrate knowledge and understanding of that resident's behavior support plan.

[ D. This section shall not apply to secure detention and the Reception and Diagnostic Center. ]

### **22VAC42-11-870. Timeout.**

A. The provider shall develop and implement written policies and procedures governing the conditions under which a resident may be placed in timeout and the maximum period of timeout. The conditions and maximum period of timeout shall be based on the resident's chronological and developmental level.

B. The area in which a resident is placed shall not be locked nor the door secured in a manner that prevents the resident from opening it, except that this subsection does not apply to secure custody facilities.

C. A resident in timeout shall be able to communicate with staff.

D. Staff shall check on the resident in the timeout area at least every 15 minutes and more often depending on the nature of the resident's disability, condition, and behavior.

E. Use of timeout and staff checks on the residents shall be documented.

### **22VAC42-11-880. Prohibitions.**

The following actions are prohibited:

1. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;
2. Limitation on contacts and visits with the resident's attorney, a probation officer, regulators, or placing agency representative;

3. Bans on contacts and visits with family or legal guardians, except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;

4. Delay or withholding of incoming or outgoing mail, except as permitted by other applicable state and federal regulations or by order of a court of competent jurisdiction;

5. Any action that is humiliating, degrading, or abusive;

6. Corporal punishment;

7. Subjection to unsanitary living conditions;

8. Deprivation of opportunities for bathing or access to toilet facilities, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

9. Deprivation of health care;

10. Deprivation of appropriate services and treatment;

11. Application of aversive stimuli, except as permitted pursuant to other applicable state regulations;

12. Administration of laxatives, enemas, or emetics, except as ordered by a licensed physician or poison control center for a legitimate medical purpose and documented in the resident's record;

13. Deprivation of opportunities for sleep or rest, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record; and

14. Limitation on contacts and visits with advocates employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or the Virginia Office [ ~~of~~ for ] Protection and Advocacy.

### **22VAC42-11-890. Pharmacological or mechanical restraints.**

A. Use of mechanical restraints is prohibited except, as permitted by other applicable state regulations or as ordered by a court of competent jurisdiction.

B. Use of pharmacological restraints is prohibited.

### **22VAC42-11-900. [ ~~Behavioral~~ Behavior ] interventions.**

A. The provider shall develop and implement written policies and procedures for behavioral interventions and for documenting and monitoring the management of resident behavior. Rules of conduct shall be included in the written policies and procedures. These policies and procedures shall:

1. Define and list techniques that are used and available for use in the order of their relative degree of restrictiveness;
2. Specify the staff members who may authorize the use of each technique; and

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3. Specify the processes for implementing such policies and procedures [ . ]

B. Written information concerning the policies and procedures of the provider's behavioral support and intervention programs shall be provided prior to admission to prospective residents, legal guardians, and placing agencies. For court-ordered and emergency admissions, this information shall be provided to:

1. Residents within 12 hours following admission;

2. Placing agencies within 72 hours following the resident's admission; and

3. Legal guardians within 72 hours following the resident's admission, except that this requirement does not apply:

a. To secure detention facilities except when a juvenile is confined in postdispositional;

b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Department of Juvenile Justice; and

c. When a state [ ~~mental~~ psychiatric ] hospital is evaluating a child's treatment needs as provided by the Code of Virginia.

C. When substantive revisions are made to policies and procedures governing management of resident behavior, written information concerning the revisions shall be provided to:

1. Residents prior to implementation; and

2. Legal guardians and placing agencies prior to implementation except that this requirement does not apply:

a. To secure detention facilities;

b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Department of Juvenile Justice; and

c. When a state [ ~~mental~~ psychiatric ] hospital is evaluating a child's treatment needs as provided by the Code of Virginia.

D. The provider shall develop and implement written policies and procedures governing use of physical restraint that shall include:

1. The staff position who will write the report and timeframe;

2. The staff position who will review the report and timeframe; and

3. Methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior.

E. All physical restraints shall be reviewed and evaluated to plan for continued staff development for performance improvement.

F. Use of physical restraint shall be limited to that which is minimally necessary to protect the resident or others.

G. Trained staff members may physically restrain a resident only after less restrictive interventions have failed or when failure to restrain would result in harm to the resident or others.

H. Only trained staff members may manage resident behavior.

I. Each application of physical restraint shall be fully documented in the resident's record including:

1. Date;

2. Time;

3. Staff involved;

4. Justification for the restraint;

5. Less restrictive interventions that were unsuccessfully attempted prior to using physical restraint;

6. Duration;

7. Description of method or methods of physical restraint techniques used;

8. Signature of the person completing the report and date; and

9. Reviewer's signature and date.

J. Providers shall ensure that restraint may only be implemented, monitored, and discontinued by staff who have been trained in the proper and safe use of restraint, including hands-on techniques [ ~~, if applicable, by an individual experienced in training staff in the management of behavior for the population served~~ ] .

K. The provider shall review the facility's behavior intervention techniques and policies and procedures at least annually to determine appropriateness for the population served.

L. Anytime children are present staff must be present who have completed all trainings in behavior intervention.

## **22VAC42-11-910. Seclusion.**

Seclusion is allowed only as permitted by other applicable state regulations.

## **22VAC42-11-920. Education.**

A. Each resident of compulsory school attendance age shall be enrolled, as provided in the Code of Virginia, in an appropriate educational program within five school business days. Documentation of the enrollment [ process ] shall be kept in the resident's record.

B. The provider shall ensure that educational guidance and counseling in selecting courses is provided for each resident and shall ensure that education is an integral part of the resident's total program.

C. Providers operating educational programs for children with disabilities shall operate those programs in compliance with applicable state and federal statutes and regulations.

D. When a child with [ disabilities a disability ] has been placed in a residential facility [ without the knowledge of school division personnel in the resident's home locality ] , the facility shall contact the division superintendent [ in that of the resident's home ] locality [ in order to effect compliance with applicable state and federal requirements relative to the education of children with disabilities ] . Documentation [ regarding of ] the contact with the resident's home school [ locality ] shall be kept in the resident's record.

E. A provider that has an academic or vocational program that is not certified or approved by the Department of Education shall document that teachers meet the qualifications to teach the same subjects in the public schools.

F. Each provider shall develop and implement written policies and procedures to ensure that each resident has adequate study time.

## **22VAC42-11-930. Religion.**

A. The provider shall have and implement written policies regarding opportunities for residents to participate in religious activities.

B. The provider's policies on religious participation shall be available to residents and any individual or agency considering placement of a child in the facility.

C. Residents shall not be coerced to participate in religious activities.

## **22VAC42-11-940. Recreation.**

A. The provider shall have a written description of its recreation program that describes activities that are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the residents that includes:

1. Opportunities for individual and group activities;
2. Free time for residents to pursue personal interests that shall be in addition to a formal recreation program except this subdivision does not apply to secure custody facilities;

3. Use of available community recreational resources and facilities except this subdivision does not apply to secure custody facilities;

4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs or other regular events; and

5. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills and attitudes.

B. The provider shall develop and implement written policies and procedures to ensure the safety of residents participating in recreational activities that include:

1. How activities will be directed and supervised by individuals knowledgeable in the safeguards required for the activities;

2. How residents are assessed for suitability for an activity and the supervision provided; and

3. How safeguards for water-related activities will be provided including ensuring that a certified life guard supervises all swimming activities.

C. For all overnight recreational trips away from the facility the provider shall document trip planning to include:

1. A supervision plan for the entire duration of the activity including awake and sleeping hours;

2. A plan for safekeeping and distribution of medication;

3. An overall emergency, safety, and communication plan for the activity including emergency numbers of facility administration;

4. Staff training and experience requirements for each activity;

5. Resident preparation for each activity;

6. A plan to ensure that all necessary equipment for the activity is in good repair and appropriate for the activity;

7. A trip schedule giving addresses and phone numbers of locations to be visited and how the location was chosen/evaluated;

8. A plan to evaluate residents' physical health throughout the activity and to ensure that the activity is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination;

9. A plan to ensure that a certified life guard supervises all swimming activities in which residents participate; and

10. Documentation of any variations from trip plans and reason [ and reason ] for the variation.

D. All overnight out-of-state or out-of-country recreational trips require written permission from each resident's legal

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guardian. Documentation of the written permission shall be kept in the resident's record.

## **22VAC42-11-950. Community relationships.**

A. Opportunities shall be provided for the residents to participate in activities and to utilize resources in the community, except this [ ~~section~~ subsection ] does not apply to secure custody facilities.

B. The provider shall develop and implement written policies and procedures for evaluating persons or organizations in the community who wish to associate with residents on the premises or take residents off the premises. The procedures shall cover how the facility will determine if participation in such community activities or programs would be in the residents' best interest.

C. Each facility shall have a staff community liaison who shall be responsible for facilitating cooperative relationships with neighbors, the school system, local law enforcement, local government officials, and the community at large.

D. Each provider shall develop and implement written policies and procedures for promoting positive relationships with the neighbors that shall be approved by the regulatory authority.

## **22VAC42-11-960. Clothing.**

A. Provision shall be made for each resident to have an adequate supply of clean, comfortable, and well-fitting clothes and shoes for indoor and outdoor wear.

B. Clothes and shoes shall be similar in style to those generally worn by children of the same age in the community who are engaged in similar activities, except this requirement does not apply to secure custody facilities.

C. Residents shall have the opportunity to participate in the selection of their clothing, except this requirement does not apply to secure custody facilities.

D. Residents shall be allowed to take personal clothing when leaving the facility.

## **22VAC42-11-970. Allowances and spending money.**

A. The provider shall provide opportunities appropriate to the ages and developmental levels of the residents for learning the value and use of money, except this requirement does not apply to secure detention facilities.

B. There shall be a written policy regarding allowances that shall be made available to legal guardians at the time of admission, except that this requirement does not apply to secure detention facilities.

C. The provider shall develop and implement written policies for safekeeping and for recordkeeping of any money that belongs to residents.

D. A resident's funds, including any allowance or earnings, shall be used for the resident's benefit.

## **22VAC42-11-980. Work and employment.**

A. Assignment of chores, that are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the resident.

B. Chores shall not interfere with school programs, study periods, meals, or sleep.

C. Work assignments or employment outside the facility, including reasonable rates of pay, shall be approved by the program director with the knowledge and consent of the legal guardian, except this requirement does not apply to secure detention facilities.

D. In both work assignments and employment, the program director shall evaluate the appropriateness of the work and the fairness of the pay.

## **22VAC42-11-990. Visitation at the facility and to the resident's home.**

A. The provider shall have and implement written visitation policies and procedures that allow reasonable visiting privileges and flexible visiting hours, except as permitted by other applicable state regulations.

B. Copies of the written visitation policies and procedures shall be made available to the parents, when appropriate, legal guardians, the resident, and other interested persons important to the resident no later than the time of admission except that when parents or legal guardians do not participate in the admission process, visitation policies and procedures shall be mailed to them within 24 hours after admission.

C. In secure detention, except when a juvenile is confined in postdispositional detention, and temporary care facilities, written visitation policies and procedures shall be provided upon request to parents, legal guardians, residents, and other interested persons important to the residents.

## **22VAC42-11-1000. Resident visitation at the homes of staff.**

If a provider permits staff to take residents to the staff's home, the facility must receive written permission of the resident's legal guardian or placing agency before the visit occurs. The written permission shall be kept in the resident's record.

## **22VAC42-11-1010. Vehicles and power equipment.**

A. Transportation provided for or used by children shall comply with local, state, and federal laws relating to:

1. Vehicle safety and maintenance;
2. Licensure of vehicles;
3. Licensure of drivers; and

4. Child passenger safety, including requiring children to wear appropriate seat belts or restraints for the vehicle in which they are being transported.

B. There shall be written safety rules [ for transportation of residents appropriate to the population served ] that shall include taking head counts at each stop [  ~~, which are appropriate to the population served, for transportation of children~~  ] .

C. The provider shall develop and implement written safety rules for use and maintenance of vehicles and power equipment.

**[ ~~22VAC42-11-1020. Reports to court. (Reserved.)~~ ]**

~~When the provider has received legal custody of a child pursuant to the Code of Virginia, copies of any foster care plans submitted to the court shall be placed in the resident's record.~~

**22VAC42-11-1030. Serious incident reports.**

A. Any serious incident, accident or injury to the resident; any overnight absence from the facility without permission; any runaway; and any other unexplained absence shall be reported within 24 hours: (i) to the placing agency, (ii) to either the parent or legal guardian, or both as appropriate; and (iii) noted in the resident's record.

B. The provider shall document the following:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name of the person who made the report to the placing agency and to either the parent or legal guardian; and
6. The name of the person to whom the report was made.

C. The provider shall notify the regulatory authority within 24 hours of any serious illness or injury, any death of a resident, and all other situations as required by the regulatory authority. Such reports shall include:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name of the person who made the report to the placing agency and to either the parent or legal guardian; and
6. The name of the person to whom the report was made.

**22VAC42-11-1040. Suspected child abuse or neglect.**

A. Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include procedures for:

1. Handling accusations against staff; and
2. Promptly referring, consistent with requirements of the Code of Virginia, suspected cases of child abuse and neglect to the local child protective services unit and for cooperating with the unit during any investigation.

B. Any case of suspected child abuse or neglect shall be reported to the local child protective services unit as required by the Code of Virginia.

C. Any case of suspected child abuse or neglect occurring at the facility, on a facility-sponsored event or excursion, or involving facility staff shall be reported immediately (i) to the regulatory authority and placing agency and (ii) to either the resident's parent or legal guardian, or both, as appropriate.

D. When a case of suspected child abuse or neglect is reported to child protective services, the resident's record shall include:

1. The date and time the suspected abuse or neglect occurred;
2. A description of the suspected abuse or neglect;
3. Action taken as a result of the suspected abuse or neglect; and
4. The name of the person to whom the report was made at the local child protective services unit.

**22VAC42-11-1050. Grievance procedures.**

A. The provider shall develop and implement written policies and procedures governing the handling of grievances by residents. If not addressed by other applicable standards, the policies and procedures shall:

1. Be written in clear and simple language;
2. Be communicated to the residents in an age or developmentally appropriate manner;
3. Be posted in an area easily accessible to residents and their parents and legal guardians;
4. Ensure that any grievance shall be investigated by an objective employee who is not the subject of the grievance; and
5. Require continuous monitoring by the provider of any grievance to assure there is no retaliation or threat of retaliation against the child.

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B. All documentation regarding grievances shall be kept on file at the facility for three years unless other regulations require a longer retention period.

## 22VAC42-11-1060. Emergency and evacuation procedures.

A. The provider shall develop a written emergency preparedness and response plan for all locations. The plan shall address:

1. Documentation of contact with the local emergency coordinator to determine [ (i) ] local disaster risks [ ~~and~~(ii) ] communitywide plans to address different disasters and emergency situations [ , and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency ] ;

2. Analysis of the provider's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, work place violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery;

3. Written emergency management policies outlining specific responsibilities for provision of administrative direction and management of response activities, coordination of logistics during the emergency, communications, life safety of employees, contractors, [ ~~students~~ students/interns ] , volunteers, visitors and residents, property protection, community outreach, and recovery and restoration;

4. Written emergency response procedures for assessing the situation; protecting residents, employees, contractors, [ ~~students~~ students/interns ] , volunteers, visitors, equipment and vital records; and restoring services. Emergency procedures shall address:

a. Communicating with employees, contractors and community responders;

b. Warning and notification of residents;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents;

e. Relocating residents, if necessary;

f. Notifying family members and legal guardians;

g. Alerting emergency personnel and sounding alarms; and

h. Locating and shutting off utilities when necessary;

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape

routes, and list of major resources such as local emergency shelters; and

6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. The provider shall develop emergency preparedness and response training for all employees, contractors, [ ~~students~~ students/interns ] , and volunteers that shall include responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency information for residents including medical information; and

5. Utilizing community support services.

C. The provider shall document the review of the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, students, and volunteers and incorporated into training for employees, contractors, [ ~~students~~ students/interns ] and volunteers and orientation of residents to services.

D. In the event of a disaster, fire, emergency or any other condition that may jeopardize the health, safety and welfare of residents, the provider shall take appropriate action to protect the health, safety and welfare of the residents and take appropriate action to remedy the conditions as soon as possible.

E. Employees, contractors, [ ~~students~~ students/interns ] , and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency.

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety and welfare of residents, the provider should first respond and stabilize the disaster/emergency. After the disaster/emergency is stabilized, the provider shall report the disaster/emergency to the [ ~~parent or legal~~ ] guardian and the placing agency as soon as possible of the conditions at the facility and report the disaster/emergency to the lead regulatory authority as soon as possible, but no later than 72 hours after the incident occurs.

G. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations where they can easily be seen by staff and residents.

H. The procedures and responsibilities reflected in the emergency procedures shall be communicated to all residents

within seven days following admission or a substantive change in the procedures.

I. At least one evacuation drill (the simulation of the facility's emergency procedures) shall be conducted each month in each building occupied by residents.

J. Evacuation drills shall include, at a minimum:

1. Sounding of emergency alarms;
2. Practice in evacuating buildings;
3. Practice in alerting emergency authorities;
4. Simulated use of emergency equipment; and
5. Practice in securing resident emergency information.

K. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

L. A record shall be maintained for each evacuation drill and shall include the following:

1. Buildings in which the drill was conducted;
2. Date and time of drill;
3. Amount of time to evacuate the buildings;
4. Specific problems encountered;
5. Staff tasks completed including:
  - a. Head count, and
  - b. Practice in notifying emergency authorities; [ and ]

[ 6. A summary; and ]

[ 7. 6. ] The name of the staff members responsible for conducting and documenting the drill and preparing the record.

M. The record for each evacuation drill shall be retained for three years after the drill.

N. The facility shall assign one staff member who shall ensure that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

**22VAC42-11-1070. Independent living programs.**

A. Each independent living program must demonstrate that a structured program using materials and curriculum, approved by the regulatory authority, is being used to teach independent living skills. The curriculum must include information regarding each of the following areas:

1. Money management and consumer awareness;
2. Food management;
3. Personal appearance;

4. Social skills;
5. Health/sexuality;
6. Housekeeping;
7. Transportation;
8. Educational planning/career planning;
9. Job-seeking skills;
10. Job maintenance skills;
11. Emergency and safety skills;
12. Knowledge of community resources;
13. Interpersonal skills/social relationships;
14. Legal skills;
15. Leisure activities; and
16. Housing.

B. Within 14 days of placement the provider must complete an assessment, including strengths and needs, of the resident's life skills using an independent living assessment tool approved by the regulatory agency. The assessment must cover the following areas:

1. Money management and consumer awareness;
2. Food management;
3. Personal appearance;
4. Social skills;
5. Health/sexuality;
6. Housekeeping;
7. Transportation;
8. Educational planning/career planning;
9. Job-seeking skills;
10. Job maintenance skills;
11. Emergency and safety skills;
12. Knowledge of community resources;
13. Interpersonal skills/social relationships;
14. Legal skills;
15. Leisure activities; and
16. Housing.

C. The resident's individualized service plan shall include, in addition to the requirements found in 22VAC42-11-630, goals, objectives, and strategies addressing each of the following areas, as applicable:

1. Money management and consumer awareness;

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2. Food management;
3. Personal appearance;
4. Social skills;
5. Health/sexuality;
6. Housekeeping;
7. Transportation;
8. Educational planning/career planning;
9. Job-seeking skills;
10. Job maintenance skills;
11. Emergency and safety skills;
12. Knowledge of community resources;
13. Interpersonal skills/social relationships;
14. Legal skills;
15. Leisure activities; and
16. Housing.

D. Each independent living program shall develop and implement policies and procedures to train all direct care staff within 14 days of employment on the content of the independent living curriculum, the use of the independent living materials, the application of the assessment tool, and the documentation methods used. Documentation of the orientation [ ~~will~~ shall ] be kept in the employee's staff record.

E. If residents age 18 years or older are to share in the responsibility for their own medication with the provider, the independent living program shall develop and implement written policies and procedures that include:

1. Training for the resident in self administration and recognition of side effects;
2. Method for storage and safekeeping of medication;
3. Method for obtaining approval for the resident to self administer medication from a person authorized by law to prescribe medication; and
4. Method for documenting the administration of medication.

F. Each independent living program shall develop and implement written policies and procedures that ensure that each resident is receiving adequate nutrition as required in 22VAC42-11-820 A, B and C.

## **22VAC42-11-1080. Mother/baby programs.**

A. Each provider shall develop and implement written policies and procedures to orient direct care staff within 14 days of hire regarding the following:

1. Responsibilities of mothers regarding the child;
2. Child development including age-appropriate behavior for each stage of development;
3. Appropriate behavioral interventions for infants and toddlers;
4. Basic infant and toddler care including but not limited to nutritional needs, feeding procedures, bathing techniques; and
5. Safety issues for infants and toddlers.

B. Each direct care worker shall have certification in infant CPR and first aid prior to working alone with infants or toddlers.

C. A placement agreement shall be signed by the legal guardian for each adolescent mother and a separate placement agreement shall be signed for each child at the time of admission.

D. In addition to the requirements of 22VAC42-11-680 B, the application for admission for the adolescent's child must include:

1. The placement history of the child;
2. The developmental milestones of the child; and
3. The nutritional needs of the child.

E. In addition to the requirements of 22VAC42-11-700, the face sheet for adolescent's child shall also include:

1. Type of delivery;
2. Weight and length at birth;
3. Any medications or allergies; and
4. Name and address, if known, of the biological father.

F. A combined service plan following the requirements of 22VAC42-11-720 must be written for the adolescent mother and her child within 30 days of the admission of the adolescent's child.

G. There shall be a combined documented review of the adolescent mother's and her child's progress following the requirements of the quarterly report 60 days following the first combined service plan and within each 90-day period thereafter.

H. The developmental milestones of the adolescent's child must be documented in each quarterly progress report.

I. The record of each child 18 months or younger shall include the child's feeding schedule and directions for feeding. This information shall be posted in the kitchen.

J. The provider shall develop and implement written policies and procedures for tracking:

1. What a child 18 months or younger is eating;

2. How much a child 18 months or younger is eating; and

3. The response to newly introduced foods of the child 18 months or younger.

K. The provider shall develop and implement written policies and procedures to record all diaper changes.

L. The provider shall monitor that all infants are held and spoken to and placed in a position to observe activities when they are awake.

M. Bottle-fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped.

N. The provider shall monitor that all children of adolescent mothers have access to age-appropriate toys and are provided opportunity for visual and sound stimulation.

O. The provider shall ensure that when an adolescent mother is in school or is working, her child is appropriately cared for, either in a licensed child day program or at the facility.

P. A daily activity log must be kept for each child of the adolescent mother showing what activities the child actually participated in during the day. The daily log must show that children have the opportunity to participate in sensory, language, manipulative, building, large muscle, and learning activities.

Q. The provider shall develop and implement written policies and procedures regarding health care of the adolescent's child including:

1. Obtaining health care;

2. Ensuring follow-up care is provided;

3. Ensuring adolescent mothers administer to their children only prescription and nonprescription medication authorized by a health care professional licensed to prescribe medication; and

4. Medication administration.

R. The provider shall develop and implement written policies and procedures to ensure that all toys and equipment to be used by children are sturdy, are of safe construction, are nontoxic and free of hazards, and meet industry safety standards.

S. The facility shall develop and implement written policies and procedures for inspecting toys and equipment on a regular basis for cleanliness and safety.

T. Cribs shall be placed where objects outside the crib such as cords from the blinds or curtains are not within reach of infants or toddlers.

U. Pillows and filled comforters shall not be used by children under two years of age.

V. Infant walkers shall not be used.

W. Adolescent mothers and their babies may share a bedroom as allowed by 22VAC42-11-480 E, but shall not share a room with other adolescents or their children.

X. Pregnant adolescents may share a room as allowed by 22VAC42-11-480.

Y. Providers shall develop and implement written policies and procedures to protect infants, toddlers, and young children from dangers in their environment. The policies and procedures must include but not be limited to protection from:

1. Electrocution;

2. Falling down steps or ramps or gaining access to balconies, porches or elevated areas;

3. Poisons, including poisonous plants; and

4. Drowning.

## **22VAC42-11-1090. Campsite programs or adventure activities.**

A. All wilderness campsite programs and providers that take residents on wilderness/adventure activities shall develop and implement policies and procedures that include:

1. Staff training and experience requirements for each activity;

2. Resident training and experience requirements for each activity;

3. Specific staff-to-resident ratio and supervision plan appropriate for each activity; including sleeping arrangements and supervision during night time hours;

4. Plans to evaluate and document each participant's physical health throughout the activity;

5. Preparation and planning needed for each activity and time frames;

6. Arrangement, maintenance, and inspection of activity areas;

7. A plan to ensure that any equipment and gear that is to be used in connection with a specified wilderness/adventure activity is appropriate to the activity, certified if required, in good repair, in operable condition, and age and body size appropriate;

8. Plans to ensure that all ropes and paraphernalia used in connection with rope rock climbing, rappelling, high and low ropes courses or other adventure activities in which ropes are used are approved annually by an appropriate certifying organization, and have been inspected by staff responsible for supervising the adventure activity before engaging residents in the activity;

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9. Plans to ensure that all participants are appropriately equipped, clothed, and wearing safety gear, such as a helmet, goggles, safety belt, life jacket or a flotation device, that is appropriate to the adventure activity in which the resident is engaged;

10. Plans for food and water supplies and management of these resources;

11. Plans for the safekeeping and distribution of medication;

12. Guidelines to ensure that participation is conducted within the boundaries of the resident's capabilities, dignity and respect for self-determination;

13. Overall emergency, safety, and communication plans for each activity including rescue procedures, frequency of drills, resident accountability, prompt evacuation, and notification of outside emergency services; and

14. Review of trip plans by the trip coordinator.

B. All wilderness campsite programs and providers that take residents on wilderness/adventure activities must designate one staff person to be the trip coordinator who will be responsible for all facility wilderness or adventure trips.

1. This person must have experience in and knowledge regarding wilderness activities and be trained in wilderness first aid. The individual must also have at least one year experience at the facility and be familiar with the facility procedures, staff, and residents.

2. Documentation regarding this knowledge and experience shall be found in the individual's staff record.

3. The trip coordinator will review all trip plans and procedures and will ensure that staff and residents meet the requirements as outlined in the facility's policy regarding each wilderness/adventure activity to take place during the trip.

4. The trip coordinator will review all trip plans and procedures and will ensure that staff and residents meet the requirements as outlined in the facility's policy regarding each wilderness/adventure activity to take place during the trip.

C. The trip coordinator shall conduct a posttrip debriefing within 72 hours of the group's return to base to evaluate individual and group goals as well as the trip as a whole.

D. The trip coordinator will be responsible for writing a summary of the debriefing session and shall be responsible for ensuring that procedures and policies are updated to reflect improvements needed.

E. A trip folder will be developed for each wilderness/adventure activity conducted away from the facility and shall include:

1. Medical release forms including pertinent medical information on the trip participants;

2. Phone numbers for administrative staff and emergency personnel;

3. Daily trip logs;

4. Incident reports;

5. Swimming proficiency list if trip is near water;

6. Daily logs;

7. Maps of area covered by the trip; and

8. Daily plans.

F. Initial physical forms used by wilderness campsite programs and providers that take residents on wilderness or adventure activities shall include:

1. A statement notifying the doctor of the types of activities the resident will be participating in; and

2. A statement signed by the doctor stating the individual's health does not prevent him from participating in the described activities.

G. First aid kits used by wilderness campsite programs and providers that take residents on adventure activities shall be activity appropriate and shall be accessible at all times.

H. Direct care workers hired by wilderness campsite programs and providers that take residents on wilderness/adventure activities shall be trained in a wilderness first aid course.

I. The provider shall ensure that before engaging in any aquatic activity, each resident shall be classified by the trip coordinator or his designee according to swimming ability in one of two classifications: swimmer and nonswimmer. This shall be documented in the resident's record and in the trip folder.

J. The provider shall ensure that lifesaving equipment is provided for all aquatic activities and is placed so that it is immediately available in case of an emergency. At a minimum, the equipment shall include:

1. A whistle or other audible signal device; and

2. A lifesaving throwing device.

K. A separate bed, bunk or cot shall be made available for each person.

L. A mattress cover shall be provided for each mattress.

M. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitoes.

N. Bedding shall be clean, dry, sanitary, and in good repair.

O. Bedding shall be adequate to ensure protection and comfort in cold weather.

P. Sleeping bags, if used, shall be fiberfill and rated for 0°F.

Q. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.

R. Each resident shall be provided with an adequate supply of clean clothing that is suitable for outdoor living and is appropriate to the geographic location and season.

S. Sturdy, water-resistant, outdoor footwear shall be provided for each resident.

T. Each resident shall have adequate personal storage area.

U. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires, or other source of combustion.

V. Artificial lighting shall be provided in a safe manner.

W. All areas of the campsite shall be lighted for safety when occupied by residents.

X. Staff of the same sex may share a sleeping area with the residents.

Y. A telephone or other means of communication is required at each area where residents sleep or participate in programs.

**NOTICE:** The forms used in administering 22VAC42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Office of Interdepartmental Regulation, Department of Social Services, 7 North 8th Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

#### FORMS

Initial Application for a Virginia State License/Certificate to Operate a Children's Residential Facility, 032-05-5535 (eff. [ ~~3/07~~ 12/07 ]).

Renewal Application for a Virginia State License/Certificate to Operate a Children's Residential Facility, 032-05-5545 (eff. [ ~~3/07~~ 12/07 ]).

Renewal Application for a Facility Holding a Conditional License/Certificate, 032-05-588 (eff. [ ~~3/07~~ 12/07 ]).

VA.R. Doc. No. R04-81; Filed November 7, 2007, 11:06 a.m.

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Air Quality Plan - Norfolk Southern Railway Company

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to attain and maintain the national ambient air quality standard for nitrogen oxides in the Western Virginia Emissions Control Area. If adopted, the Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia state implementation plan (SIP) in accordance with the requirements of §110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comments on whether a now-obsolete permit that had established RACT for a facility that has been shut down should be removed from the SIP.

Public comment period: November 9, 2007, to December 10, 2007.

Public hearing: The Obenshain Room, DEQ West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia, at 6 p.m. on December 10, 2007.

Description of proposal: The Norfolk Southern Railway Company rail car and locomotive maintenance facility located in Roanoke, Virginia, (Registration No. 20468) has permanently shut down several coal-fired boilers that were subject to reasonably available control technology (RACT). Because the facility is permanently shut down, DEQ is requesting that EPA remove the permit from the SIP. Once EPA has approved this request and DEQ has notified the owner of this approval, the permit repeal will become effective 30 days later. DEQ is seeking comments on the issue of whether the now-obsolete permit should be removed from the SIP.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under §110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

How to comment: DEQ accepts written comments by email, facsimile transmission and postal mail. In order to be considered, written comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period. Due to problems with the quality of facsimile transmissions, commenters are encouraged to provide the signed original by postal mail within one week. Both oral and written comments are accepted at the public hearing. DEQ

prefers that comments be provided in writing, along with any supporting documents or exhibits. All testimony, exhibits and documents received are part of the public record. Please note this proposed plan is being concurrently reviewed by the U. S. Environmental Protection Agency.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.virginia.gov/air/permitting/planotes.html>).

The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following locations: (1) DEQ Main Street Office, 8th Floor, 629 E. Main Street, Richmond, Virginia, (804) 698-4070 and (2) DEQ West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia, (540) 562-6700.

Contact for public comments, document requests and additional information: Lillian J. Alexander, Permit Writer, DEQ West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6783, FAX (540) 562-6729, or email [ljalexander@deq.virginia.gov](mailto:ljalexander@deq.virginia.gov).

### Air Quality Plan - Virginia State Implementation Plan

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to attain and maintain the national ambient air quality standard for ozone and very fine particulate matter (PM<sub>2.5</sub>). If adopted, the Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia state implementation plan (SIP) in accordance with the requirements of §110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comments on the overall plan, and on the issue of whether the plan demonstrates the Commonwealth's compliance with certain federal Clean Air Act requirements related to general state plan infrastructure.

Public comment period: November 2, 2007, to December 5, 2007.

Public hearing: First Floor Conference Room, Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, at 9 a.m. on December 5, 2007.

Description of proposal: This SIP revision addresses those requirements of §110(a)(2)(A) through (M) of the federal Clean Air Act that have not been addressed in other SIP revisions. It is a compilation of certain elements that describe how the state will demonstrate how the eight-hour ozone

National Ambient Air Quality Standards are being implemented, maintained and enforced. This SIP revision, once approved by EPA, will provide a federally enforceable confirmation of how the state will continue to comply with the requirements of §110(a)(2).

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under §110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, facsimile transmission and postal mail. In order to be considered, written comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period. Due to problems with the quality of facsimile transmissions, commenters are encouraged to provide the signed original by postal mail within one week. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All testimony, exhibits and documents received are part of the public record. Please note this proposed plan is being concurrently reviewed by the U.S. Environmental Protection Agency.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.virginia.gov/air/permitting/planotes.html>). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following locations:

1. DEQ Main Street Office, 629 E. Main Street, 8th Floor, Richmond, Virginia, (804) 698-4070
2. DEQ Southwest Regional Office, 355 Deadmore Street, Abingdon, Virginia, (540) 676-4800
3. DEQ West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia, (540) 562-6700
4. DEQ South Central Regional Office, 7705 Timberlake Road, Lynchburg, Virginia, (804) 582-5120
5. DEQ Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia, (540) 574-7800
6. DEQ Fredericksburg Satellite Office, 806 Westwood Office Park, Fredericksburg, Virginia, (540) 899-4600
7. DEQ Piedmont Regional Office, 4949-A, Cox Road, Glen Allen, Virginia, (804) 527-5020

8. DEQ Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia, (703) 583-3800

9. DEQ Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia, (757) 518-2000

Contact for public comments, document requests and additional information: Doris A. McLeod, Air Quality Planner, Air Planning Programs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, phone (804) 698-4197, FAX (804) 698-4510, email [damcleod@deq.virginia.gov](mailto:damcleod@deq.virginia.gov).

### **Total Maximum Daily Load - Back and Poquoson River Watersheds**

The Department of Environmental Quality (DEQ), the Department of Conservation and Recreation, the Hampton Roads Planning District Commission, the City of Hampton, York County, and the City of Poquoson invite citizens to a public meeting to discuss the development of implementation plans (IP) to address fecal bacteria impairments to shellfishing and recreation in the Back and Poquoson River watersheds. Total maximum daily load (TMDL) studies for the impairments were approved by EPA in 2006 and are available on DEQ's website at [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl).

The implementation plans will identify ways to meet the pollutant reductions outlined in the TMDL studies.

The first public meeting to begin development of the TMDL implementation plans for the Back and Poquoson River watersheds will be held Thursday, November 29, 2007, at 7 p.m., Sandy Bottom Nature Park, 1255 Big Bethel Road, Hampton, Virginia.

The purpose of the meeting is to discuss the proposed reductions in bacteria needed in the affected watersheds and to solicit public participation for the IP development.

The IPs will include the corrective actions needed to reduce bacteria and the associated costs, benefits and environmental impacts. The IPs will also provide measurable goals and a timeline of expected achievement of water quality objectives. A fact sheet on the development of the IPs is available upon request.

How to comment: The public comment period on development of the IPs will end on January 2, 2008. Oral comments will be accepted and addressed at the public meeting. Additional questions or information requests should be addressed to Chet Bigelow. Written comments and inquires should include the name, address, and telephone number of the person submitting the comments and should be sent to Chet Bigelow at DEQ or Jennifer Tribo at Hampton Roads Planning District Commission:

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## General Notices/Errata

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Chet Bigelow, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4554, email [ccbigeLOW@deq.virginia.gov](mailto:ccbigeLOW@deq.virginia.gov)

Jennifer Tribo, Hampton Roads Planning District Commission, 723 Woodlake Dr., Chesapeake, VA 23320, telephone (757) 366-4344, FAX (757) 523-4881, email [jtribo@hrpdc.org](mailto:jtribo@hrpdc.org)

### **Total Maximum Daily Load - Messongo Creek and Hungars Creek**

The Department of Environmental Quality (DEQ), Virginia Department of Conservation and Recreation, and the Department of Health (VDH) seek written and oral comments from interested persons on the development of a total maximum daily load (TMDL) for fecal coliform bacteria in waters located in Accomack County and Northampton County, Virginia.

Section 303(d) of the Clean Water Act and §62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL priority list and report and subsequent water quality assessment reports. Virginia agencies are working to identify sources of bacteria contamination in the watersheds of both Messongo and Hungars Creeks.

During the study, DEQ will develop a total maximum daily load for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

Messongo Creek, located in Accomack County, was identified in Virginia's 1998 303(d) TMDL priority list and report. Sufficient exceedances of Virginia's water quality standards for fecal coliform bacteria assessed segment VAT-C10E-05 as not supporting the recreation use.

Hungars Creek, located in Northampton County, was identified in Virginia's 1998 303(d) TMDL priority list and report for not supporting the shellfish growing water and recreation water uses. Segment VAT-C14E-11 is impaired due to violations of the state's water quality standard for fecal coliform bacteria in shellfish growing waters. The impaired segment is located in VDH Growing Area 86: Closure 136A. Sufficient exceedances of Virginia's water quality standards for fecal coliform bacteria assessed segment VAT-C14E-01 as not supporting the recreation use.

The public meeting is scheduled for Wednesday, December 19, 2007, at 6 p.m. in the Eastern Shore Agriculture Research and Extension Center, 33446 Research Dr, Painter, Virginia. The purpose of the meeting is to discuss the TMDL development process and to share information on bacteria sources in the watershed. A technical advisory committee (TAC) will also form and meet during the public meeting.

The purpose of the TAC is to provide technical input and insight for the project, review the draft reports, and to assist with stakeholder and public participation.

The public comment period on materials presented at this meeting will extend from December 19, 2007, to January 22, 2008. Questions or information requests will be accepted by email, fax, or mail. Written comments should include the name, address, and telephone number of the person submitting the comments.

For additional information and to submit comments: Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2111, FAX (757) 518-2003, or email [jshowell@deq.virginia.gov](mailto:jshowell@deq.virginia.gov).

Information from this meeting will be made available on the DEQ TMDL website at <http://www.deq.virginia.gov/tmdl/>.

## **STATE LOTTERY DEPARTMENT**

### **Director's Orders**

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on October 30, 2007. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Fifty-Nine (07)

Virginia's Instant Game Lottery 1008; "7 Come 11" (effective 10/23/07)

Director's Order Number Sixty (07)

Virginia's Instant Game Lottery 1009; "Cut The Deck" (effective 10/23/07)

Director's Order Number Sixty-One (07)

Virginia's Instant Game Lottery 1011; "Cash Cards" (effective 10/23/07)

Director's Order Number Sixty-Two (07)

Virginia's Instant Game Lottery 1010; "\$100,000 Double Action 2 The Sequel" (effective 10/23/07)

## **STATE WATER CONTROL BOARD**

### **Proposed Consent Special Order**

Purpose of notice: To invite citizens to comment on a proposed consent order for a facility.

Public comment period: November 26, 2007, to December 26, 2007.

Consent order description: The State Water Control Board proposes to issue a consent order to Jean H. Shepherd to address alleged violations of the regulations. The location of the UST facility where the alleged violations occurred is in Clarke County, Virginia. The consent order describes a settlement to resolve these violations.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: David C. Robinett, Department of Environmental Quality, Valley Regional Office, Post Office Box 3000, 4411 Early Road, Harrisonburg, VA 22801-9519, telephone (540) 574-7862, FAX (540) 574-7878, or email [dcrebinett@deq.virginia.gov](mailto:dcrebinett@deq.virginia.gov).

## VIRGINIA CODE COMMISSION

### Elimination of the Calendar of Events Section

Effective July 1, 2007, the Calendar of Events section will no longer be published in the Virginia Register of Regulations. Chapter 300 of the 2007 Acts of Assembly amended the Administrative Process Act by eliminating the requirement that all state agency meeting notices be published in the Virginia Register. In lieu of publication in the Virginia Register, the Virginia Freedom of Information Act was amended to require that agencies post meeting notices on the agency's website and on the Commonwealth Calendar maintained by the Virginia Information Technologies Agency. To access the Commonwealth Calendar, please visit the Commonwealth of Virginia's homepage at [www.virginia.gov](http://www.virginia.gov) and click on the calendar on the right side of the screen. Public hearing information will still be published in the Register and can be found with the corresponding proposed regulation.

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

### Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for

publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

## ERRATA

### DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services From Providers of Mental Health, Mental Retardation and Substance Abuse Services (adding 12VAC35-115-145, 12VAC35-115-146; amending 12VAC35-115-10 through 12VAC35-115-250; repealing 12VAC35-115-160).

Publication: 23:25 VA.R. 4301-4344 August 20, 2007.

Correction to final regulation:

Page 4321, 12VAC35-115-90 A 1, "except" was inadvertently stricken from the sentence. The sentence should read:

"1. See, read, and get a copy of his own services record, except [~~psychotherapy notes~~] information that is privileged pursuant to §8.01-581.17 of the Code of Virginia, and information compiled by the provider in reasonable anticipation of or for use in a civil, criminal, or administrative action or proceeding;"

VAR. Doc. No. R05-146

### VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: 9VAC20-130. Solid Waste Planning and Recycling Regulations (amending 9VAC20-130-10, 9VAC20-130-40, 9VAC20-130-60, 9VAC20-130-70, 9VAC20-130-90, 9VAC20-130-110, 9VAC20-130-120, 9VAC20-130-130, 9VAC20-130-165, 9VAC20-130-175 through 9VAC20-130-230; adding 9VAC20-130-125, repealing 9VAC20-130-140, 9VAC20-130-150).

Publication: 24:4 VA.R. 480-493 October 29, 2007.

Correction to final regulation:

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## General Notices/Errata

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Page 486, 9VAC20-130-120 A should read: "A. [ ~~The solid waste management plan shall include~~ Basic planning elements ] :"

Page 488, 9VAC20-130-125 B, in the formula beginning with "Where" there is a misspelling. The word "principle" should be "principal"

Page 491, 9VAC20-130-200, strike "a" in the catchline. Catchline should read: "Considerations in designating ~~a regional boundary~~ solid waste planning unit boundaries."

VAR. Doc. No. R06-29